THE PATRIOTISM OF PEACE

HANLY

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The Patriotism of Peace

PUBLIC ADDRESSES
AND STATE PAPERS OF

GOVERNOR J. FRANK HANLY

OF INDIANA

Compiled by
GEORGE B. LOCKWOOD

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INTRODUCTORY

THE public addresses and State papers incorporated in this volume are not the pyrotechnics of a mere rhetorician; they are, rather, sparks from the anvil of a strong man arduously at work: and in this, forceful as the subject matter is in form and content, lies its chief value and interest. The doctrines enunciated are not new: in large part these papers and addresses are only the eloquent re-statement of the fundamental principles underlying free government: but they are vitalized by the fact that they represent the practical application of these principles to the problems which have confronted a public official charged with important executive responsibilities, involving the welfare of all the people of a great commonwealth.

The change which has come over the people in recent years,—it might also be said in recent months,—in their attitude toward questions of public policy, is due not to the sudden birth of new ideals, but to an awakened conscience exerted in behalf of old ideals which hitherto have had a more active realization on the printed page and in the spoken word than in the every day lives of the people and in the official acts of their servants in authority. What has so recently happened in politics long ago worked a transformation, for instance, in science and in religion. The abstractions of science, once considered sufficient in themselves, have almost altogether ceased to interest except in their relation to the problems of civilization which scientific discoveries are serving to solve; the technical points of theology, which were once not only the subjects of debate but the rallying cries of warfare, are more and more forgotten while in mutual good-will the churches multiply their practical activities for the uplift of humanity; and, at last, politics is being practicalized in the best sense of that word; we are exalting in public life the homely fireside virtues,—and rallying to the support of those who best exemplify them in their public service. This does not mean the dissolution of party organizations, which in a republic afford the only means of responsible government, but

it does involve their regeneration and dedication to a higher form of public service than that of continual contending over traditional political principles which do not vitally affect the permanent well being of the people.

In the career of J. Frank Hanly as Governor of Indiana, theory and practice have been one and the same: the deed has squared with the word. Believing with all publicists that under a republican form of government, especially, the laws of the State, which are the will of the people expressed through their representatives, are made to be enforced; that under his oath as Governor no alternative is presented as against the enforcement of any and every law found upon the statute books of the commonwealth, Governor Hanly, to quote his own language, has "insisted that all laws should be obeyed by all citizens everywhere." Under the Constitution of the State of Indiana, the first duty of the Governor of the State is "to take care that the laws be faithfully enforced." The authority conferred upon the chief executive in this respect is not commensurate with the responsibility. The immediate jurisdiction of the Governor extends only to the executive departments, and to certain localities covered by the provisions of the metropolitan police law. Beyond these limits the influence of the executive may be exerted only by example and exhortation, except when acting as commander-in-chief of the military forces of the State called into service to suppress riot or insurrection. A number of the public addresses included in this volume were called forth by the Governor's desire to arouse the people to the supreme importance of the policy of law enforcement in every community of the State. During the first year of Governor Hanly's administration he traveled seventeen thousand miles, making one hundred addresses, much of the travel being at night, going to very many places without compensation, and even paying his own expenses. The purpose of this was to stir the public conscience and arouse the public thought, so that the policy of the administration, having in view the just and impartial enforcement of the law, might have the support of the people. The impression thus effected upon the people of the State has been deep and lasting, the words of the Governor having carried with them the weight that accompanies the preaching of a man who is earnestly endeavoring to live his own gospel.

No more forceful presentation of the work of the administra-

tion could be made than is contained in Governor Hanly's speech at the Republican State Convention on April 11, 1906, which appears in this volume. A comparison of the Inaugural address of Governor Hanly with the published Acts of the General Assembly of 1905, will show that a large number of its recommendations were adopted by the Legislature either in part or in their entirety. The institutional affairs of the State received a large measure of attention in this address, and several important enactments were the result. By reason of this legislation a system of trade schools has been established in the State Reformatory, and a binder twine plant has been placed in successful operation in the State Prison, the object in each case being to save the inmates of these two institutions from the blighting effects of idleness and at the same time to minimize their competition with free labor. Several new institutions were authorized by the General Assembly of 1905, involving heavy responsibilities upon the Governor, which have been discharged with all the dispatch consistent with mature consideration. The Girls' Industrial School is well under way and will be completed during the summer of 1906. The Southeastern Hospital for the Insane, authorized for the purpose of relieving the pressure upon the four existing hospitals for the insane, has been located, and the contract for its construction will soon be let. The Institution for the Deaf and Dumb has been relocated, and construction will be well under way during the present year. The Village for Epileptics has been located, and a superintendent selected. Each of these purchases has been made with care and without the suggestion of scandal. The administration of institutional affairs has been absolutely nonpartisan, and has been maintained upon a plane unsurpassed in any other State of the Union.

In other important particulars the General Assembly responded to the recommendations of the Governor, notably in the enactment of the bill providing for the establishment of a Railroad Commission, with power to protect the shipper and the public generally from unjust discrimination in transportation rates, and the Moore amendment to the Nicholson Law permitting the people to remonstrate against the saloon business in their several wards and townships, where before the right was limited in its application to a remonstrance against the individual seeking a liquor license. The Railroad Commission created under the new statute has already succeeded in checking and correcting

some of the unjust practices which created a demand for the establishment of the tribunal, and the salutary effect of the law has been felt to an extent not indicated by the number or importance of the cases actually brought to its attention. The effect of the Moore amendment has been to relieve the people of many communities of the State from the annoyance incident to repeating their remonstrances at each monthly meeting of their County Board of Commissioners, and to wipe out a large number of saloons hitherto existing in defiance of local public opinion.

While Governor Hanly has been most of all concerned with moral issues, his has been a business administration in the best sense of that term,—in the sense which implies the same careful scrutiny and jealous care which the conscientious man of business applies to his private affairs. The State debt has been reduced $407,000,—all that can be paid upon it without going into the market and buying bonds until 1910, when the State's next option to buy matures. To meet the expenses incurred by the construction of the new State institutions, the three cent State debt sinking fund levy was by the last General Assembly transferred to the general fund for 1906 and 1907. This will provide for the construction of all the new State institutions authorized without incurring a dollar of State indebtedness. The restoration of the State debt sinking fund levy in 1908 and 1909 will in these two years produce a fund sufficient to pay all of the State debt that it is possible to pay the moment the State's option matures, and five years before these bonds are due. Indiana is one of the few States in which the tax levy for State purposes has remained at practically the same figure for a decade, despite a constantly increasing population, and a still more greatly increased demand upon the institutional system of the State. The amount of new institutional construction now under way is almost unprecedented in the history of the State, which renders more conspicuous the success of the administration in keeping within the appropriations.

The official statement of the Governor with reference to the case of State Auditor Sherrick is so clear and convincing that it leaves little to be said on this subject. The service which Governor Hanly has rendered the State in uprooting the vicious precedents which have resulted in the downfall of scores of men in county, township and State office, and in the diversion of thousands upon thousands of dollars of the people's money to

private coffers, if it were the only important act of his administration would in itself constitute a lasting claim upon the gratitude of the people of Indiana. Of this service the recovery of $164,000 to the public treasury of the State, and the prospective recovery of many thousands more by reason of suits pending, is the smallest part, though this in itself is more than enough to pay the total expense of an entire session of the General Assembly. If Governor Hanly, in the several cases in which he has been compelled to take action at the sacrifice of his own personal sympathies, has made public the disgrace of some men, he has saved many another official from the same disgrace, and the people of the State from the demoralization and reproach arising from the misdeeds of unfaithful public servants.

The veto messages of Governor Hanly, a number of which are presented in this volume, indicate the careful consideration which the Governor, in the midst of the great pressure of public duties incident to a legislative session, gave to the bills laid upon his table. Every act of the last General Assembly was personally read and considered by the Governor, and every one either signed or vetoed; none became a law without his signature. Thirty bills were vetoed, and no bill was passed over the veto, although, under the Constitution of the State, only a majority vote is required to attain this end. By the exercise of the veto power Governor Hanly halted the practice of refunding to public officers by legislative enactment public funds lost by them through the failure of banking institutions in which these funds had been deposited, clearly establishing the principle that this amounted to an appropriation of public revenues to private purposes.

This volume takes its name not simply from the public address which appears first upon its pages, but from the motive which had inspired the public acts and utterances of an executive whose place in the history of the State is already that of a war governor in time of peace,—a motive which Governor Hanly, himself, has well described as "a passion which preserves and perpetuates that which the patriotism of war has created and established; and which, originating in love of country, impels obedience to its laws and a desire for the promotion of its welfare and for the maintenance of peace and order and the repose of society throughout its borders; an every day passion continuing and enduring; the basis of all true citizenship, upon which

civic worth is founded, and from which springs every service of real and permanent value to the State,—*the patriotism of peace.*" By all those who, in Indiana, and everywhere throughout all the States, are in accord with the truer spirit of patriotism which is beginning to possess the people, these papers and addresses, having in them the ring of battle for a better political and social order, will be read with quickening pulses and a strengthened determination to play a brave part in the country-wide campaign now on for the establishment of the old ideals of the republic in private and public life.

GEORGE B. LOCKWOOD.

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THE PATRIOTISM OF PEACE.

(This address was prepared for the Quadrennial Conference of the United Brethren Church held in Topeka, Kansas, in May, 1905. It was delivered on the evening of May 16th. Its reception was such, and the demand growing out of its delivery at the Conference so great, that it was subsequently delivered as a lecture on many different occasions and in ten different states.)

One hundred and twenty-nine years ago our fathers founded a new nation, in a new world, amid narrow and primitive surroundings, and under circumstances of such adverse and perilous character as to challenge the purpose and the courage of the most resolute and heroic. They builded as they well knew at the hazard of their lives, their fortunes and their sacred honor; but they builded and faltered not until the fabric of government they sought to rear was not only completed but acknowledged by the nations of the earth.

When they formed their high resolve to found a new and an independent nation, they were few in numbers, limited in resources, and without a place at the council-board of the nations. They occupied a narrow fringe of territory along the Atlantic. On one side of them were three thousand miles of the mystery and the storm of the sea. On the other, vast unexplored and unknown stretches of primeval forests and the solitudes of pathless prairies. The armies of Great Britain were encamped on the soil around about them and the navies of the "Mistress of the Seas" were assembled upon the waters in sight of them, but they proclaimed their purpose without fear and without faltering.

All did not live to see the dream crystallized into reality. There was sacrifice and grief and disaster. The travail of the land was sore and long continued. It was necessarily so. It will always needs be so. A nation cannot be born without pain. Some fell in battle at Bunker Hill, on Long Island, at White Plains, at Germantown, and at the Brandywine; some on the frontier in the midnight foray, even as they stood beside the smouldering embers of consumed cabins and looked with tear-dimmed eyes into the white up-turned faces of wives and children; some at Monmouth, at the Cowpens, and at Yorktown; but the survivors fought on and did not falter.

Some expired of exhaustion upon the weary march; some froze and starved at Valley Forge and at Morristown; some perished alone in the fever infested swamps of Georgia and the Carolinas; some sickened and languished and died on board British prison ships; but, though the land was desolate and made ugly by the scars of war, and though the hearts of the living were heavy with sorrow for the dead, the survivors struggled on and on and did not falter.

Thus they, our fathers, opened a new way, trod a new path and founded a new nation, builded upon the equality of man, and having for its foundation the principle of liberty buttressed by the law. Thus they fought the good fight, finished the work they were given to do and departed, leaving the world their debtor forever and a day.

A generation later their children were again in battle array. Again there was sacrifice and carnage and desolation on land and sea, and Lakes Erie and Champlain, and Lundy's Lane and New Orleans were added to the battle names of the Republic. The sons of the founders of the young nation gave freely of their treasure

and their lives to preserve from the hand of the despoilers what their fathers had established. They served and sacrificed and died as did their fathers, and the survivors, like their fathers, faltered not, but fought on and on until the nation's right to independent life was re-acknowledged.

Forty-five years later another generation,—grandsons of the early fathers,—found themselves face to face with each other in fratricidal war. A crisis born of two hundred and fifty years of error was upon them. Two hundred and fifty years of blood drawn by the lash was to be repaid by four years of blood drawn by the sword. The life of the nation trembled in uncertain balance. Lincoln plead with solemn and pathetic eloquence for the Union and for peace. He appealed to the ties of consanguinity, to the benefits and hopes to be derived from the Union as it was, and to the common memories stretching from the hearth-stones and the hearts of the living, North and South, back to the battle fields and patriot graves of the past, but the angry sons of the South gave him no ear. They were as eager to fight for error as their fathers had been to do battle for the truth. The North was given no alternative other than to yield the eternal right. That it could not do. And so the parliament of debate was closed. Differences were submitted to the arbitrament of the sword, and the red tide of battle was set running between the children of a common ancestry.

As we look, the whole country becomes one vast theater, across whose stage contending armies march, and re-march, and encamp, and fight, and march, and fight again, and upon which the tragedies of all the centuries are re-enacted.

There are the shrill and thrilling notes of fife and drum, the impassioned appeals of orators, the recruiting officers,

the muster roll, and the enlisting men. Here farewells are being said. Aged and tottering fathers lift enfeebled hands in blessing upon the heads of young and stalwart sons, and mothers embrace their first-born, and with Spartan courage and apostolic devotion, bid them go. Dimpled hands and baby arms are about the necks of some, and kisses are impressed upon the lips of others,—kisses born of the holy fires of wedlock,—lingering, clinging kisses, into which are infused the heart and soul of her who gives them.

There are the marching columns, with their long lines of blue;—the swinging step, the shouldered muskets, the gleaming bayonets, the stirring music, the vaunting flags, and the loyal cheering people,—marching away,—fathers, sons, brothers and husbands,—away to do and to die on sanguinary fields and upon the storm-swept decks of ships of war.

Yonder are the battle lines,—the blazing muskets, the belching cannon, the shouts of commanders, the cheers and cries of enraged and struggling men, the frenzied charge across enfiladed fields, up shell-ploughed slopes to the mountain's embattled crest. And here, ah me! ah me! here the dead and wounded are. Horse and rider, friend and foe, the blue and the gray, the loyal and the traitorous, blended in one common scene of carnage,—here, side by side; and there, heaped breast high, in one indistinguishable mass. In the sunshine, in the shadow, under the trees, among the pines, by the brook crimson dyed, in the ravine, and on the hillside, everywhere and everyhow they lie. Torn by shot and shell, here with bayonet thrust, and there with saber stroke, and above them all the fading blue of the evening sky, into which the silent stars bloom out one by one, sweet, and afar, and serene. And now we stand alone in the silence of the twilight, amid the wounded, the

bleeding, the dying and the dead,—alone on the field of battle.

Scene after scene passes across the stage with the rapidity and vividness of a moving picture. Here is Bull Run, and yonder Seven Pines, and Whiteoak Swamp, and Fair Oaks, and Malvern Hill; and over there is Shiloh; and there Stone River; and there, and there, and there, Chancellorsville and Antietam and Fredericksburg. And yonder come new columns, marching, marching, marching, three hundred thousand strong. From field and farm, from village, from city and metropolis, they are coming to take the places of the wounded and the dead in the thinned ranks of the living.

And there is Vicksburg, and yonder Gettysburg! Gettysburg! ah me, ah me! Gettysburg, Treason's Waterloo, Rebellion's fatal rock. Gettysburg! embalmed and sanctified by blood and sacrifice! Gettysburg! immortalized by Lincoln's deathless words. And there is Chickamauga, and Missionary Ridge, and Kenesaw Mountain, and Atlanta; and yonder Spottsylvania, and over there The Bloody Angle in the Wilderness, and here Cold Harbor, and at last, Appomattox. Thank God for Appomattox!

The ravages and the desolation of war are everywhere. North and South it has touched every home and entered as a factor into the equation of every life. Five hundred thousand of the best and the bravest have died either of sickness or of wounds. Among them are Lyon and Ellsworth and Sedgewick and Reynolds and Kearney and McPherson and the countless nameless ones who sleep in the valleys, or upon the hillsides, in graves unknown and unmarked.

> "By the flow of the inland river,
> Whence the fleets of iron have fled,
> Where the blades of the grave-grass quiver,

Asleep are the ranks of the dead;
Under the sod and the dew,
Waiting the judgment day;
Under the one the Blue;
Under the other the Gray."

This, all this, and for what? That the Union established by the fathers might be preserved, and that liberty, buttressed by law, might not perish from the earth. Those who died, and the living who loved and wept and mourned for them, and those who struggled on and would not yield, believed the inheritance to be worth the sacrifice. They went to the blood-red altar sad only that they had but one life to give. Tonight the memories of them come to us through the intervening years as fresh and fadeless as the day they fell,—memories that have become embalmed and sanctified and hallowed by the lapse of time and which possess for us the elements of a benediction.

I have plucked these pages from the history of the battle days of the Republic not to open again the wounds of long ago, nor to stir again to life animosities that have faded, long since, out of your hearts and your memories. The courage, the valor and the devotion of the American soldier, Union or Confederate, have become the common heritage of all the nation. We are at peace again with one another. There are no sections.

"No more shall the war-cry sever,
Or the winding rivers be red;
They banish our anger forever,
When they laurel the graves of our dead.
Under the sod and the dew,
Waiting the judgment-day;
Love and tears for the Blue;
Tears and love for the Gray."

But I have plucked these pages from the history of

the battle days of the land in which we live that I might remind you of the cost and of the immeasurable value of free institutions, our inheritance; and that I might hold up before you as in a mirror a picture of the supreme moral exultation which men call patriotism, and which I have termed "the patriotism of war,"—the passion which impels a citizen to protect and defend the land in which he lives, at the peril of his property and of his life, and in response to which men have rushed to their death in this republic as to a festival.

The patriotism of war is grand, inspiring and glorious; but there is a passion emanating from the same fountain-head,—yet differing in quality, in manner of expression, in degree of exultation, and, if possible, purer and holier than the patriotism of war,—a passion of finer fiber, less gaudy, but quite as sublime; a passion without which the institutions of this day could never have been; without which liberty, protected by law, would still be but a dream, and without which this nation could not endure for a year; a passion which preserves and perpetuates that which the patriotism of war has created and established; and which, originating in love of country, impels obedience to its laws and begets zealous and constant support of its institutions and a desire for the promotion of its welfare and for the maintenance of peace and order and the repose of society throughout its borders; an every day passion continuing and enduring; the basis of all true citizenship; upon which civic worth is founded, and from which springs every service of real and permanent value to the State:—*the patriotism of peace.*

The independence of the colonies,—the acknowledgment of their right to be free,—was won by the patriotism of war. But the union of the States was made possible alone through the patriotism of peace.

War is a whirlwind, a hurricane, an avalanche, an earthquake. It is a cataclysm. Its results are immediate and appalling. It topples thrones, deposes dynasties, overturns empires and destroys governments. In its trail ruin is. Desolation, disorder and chaos are its incidents. Only a sublime exultation can meet its demands or stay its tide. Like the whirlwind, the hurricane, the avalanche, and the earthquake, however, it is not long continued. It is an abnormal condition. It therefore cannot continue long. The exultation it calls forth is likewise too intense to be long lived. It ebbs with the receding waves of the cataclysm that called it forth, and, like the waters after the storm, it seeks the wonted level of peaceful days.

Peace is a normal condition. It is a people's natural state. It continues and endures year after year, and decade after decade. With it comes accumulation of money and of property, the ease of plenty, the inertia of wealth, and the greed of gain. These enfeeble manhood, despoil citizenship and impair the people's moral worth. The dangers of peace are not so visible nor tangible as the dangers of war, but they are not one whit less perilous, and if misunderstood and not met with courage and unflinching purpose, they destroy free government as certainly and as completely as war itself can do. They do not come with parade and drum. They do not march in armed battalions, nor in serried columns. They conceal themselves in ambush. They accomplish by deceit and false pretense what the dangers of war accomplish by open feats of arms. They are insidious and, therefore, are not readily recognized. It is sometimes difficult for the most discerning to distinguish between the art of the demagogue and the appeal of the statesman. In times of peace apparent security makes the people careless. Patriotism sinks to

low ebb. Wholesome laws are disregarded. Official obligation becomes a meaningless form. Liberty becomes license; civic righteousness an empty, sounding phrase, and public duty an idle term. Greed and avarice take the place of the nobler virtues and lead the few to trample upon the rights of the many and to ignore the law, civil and divine.

This nation is today at low tide in the patriotism of peace. It is perilously near the condition I have just described. It may be that the surface of the water appears smooth and even placid to the casual observer, but the rocks are near and the time is come when, if the nation is to be saved, those who really love it must be willing to talk for it, to work for it, to vote for it, and to live for it.

During the past ten years, we as a people have amassed property and accumulated wealth more rapidly than any other nation of the world has done in an equal length of time. We have been absorbed in making money, engrossed in getting rich. In fact, we have become money-mad and are possessed of a passion to obtain wealth, no matter how. We have come to ignore the old fundamental principles upon which the fathers founded this nation. We have forgotten the Great God's commandment, "Thou shalt not steal," or, if remembering it, we have relegated it to the company of the worn-out tenets of an older age.

We have no need today of the patriotism of war. War in its severest and most appalling form could not greatly imperil this government. No nation in the world could greatly injure us. Our position on the globe, the resources of our country, the individual courage and initiative of our people all preclude that. If the nations of the earth were to conspire with common purpose, and that purpose were the spoliation and

the subjugation of this people, and they were to call to their aid the mustered armies of the world and the assembled navies of christendom, they could not in a hundred years reach the city where I live. Stirred by such a danger our people would rise and save the land by sacrifice and death, even as their fathers by sacrifice and death created it. Its defenders would spring from everywhere, countless as the forest leaves. There are not three men in this audience who, under such conditions, would not be willing to give their lives to preserve free institutions. But there are twenty men in this audience who lack the moral fiber, the courage and the patriotism to live for the same institutions, or to meet with courageous front the daily obligations of their free citizenship.

Because of this we need, as rarely before in our history, a revival of the patriotism of peace; a willingness to serve the State with high and lofty aim; a return, if you please, to the simpler way,—to the old time path of truth and consecrated, high resolve. Failure to recognize the danger or to meet it as become the citizens of a Christian nation, will result in history repeating itself and in making appropriate to ourselves the lines of Lord Byron, written of another land in another age:

"Clime of the unforgotten brave!
Whose land from plain to mountain-cave
Was Freedom's home or Glory's grave!
Shrine of the mighty! can it be,
That this is all remains of thee?
Approach, thou craven crouching slave:
Say, is not this Thermopylae?
These waters blue that round you lave,
Oh servile offspring of the free—
Pronounce what sea, what shore is this?
The gulf, the rock of Salamis!
'Twere long to tell, and sad to trace,
Each step from splendour to disgrace;

Enough—no foreign foe could quell
Thy soul, till from itself it fell;
Yes! Self-abasement paved the way
To villain-bonds and despot sway."

This is your country and it is for you to say whether these lines shall become its epitaph.

Treason is the antonym of patriotism. The treason of war is the antonym of the patriotism of war. The treason of peace is the antonym of the patriotism of peace. Treason, in a legal or constitutional sense,—the treason of war,—consists in levying war against either the State or the national government, or in adhering to the enemies of either of such governments, or in giving aid or comfort to the enemies of either. It is a grave crime,—the highest known to the law,—and is visited by the law's severest penalties. Other crimes strike directly at the welfare or life of the individual citizen, and thereby, of course, indirectly at society or the State. But treason in the legal or constitutional sense strikes directly at the life of the State itself. It aims at the vitals of the government. It is a repugnant and odious thing. It involves the betrayal of country and the alienation of allegiance to its people. There is in it something of the foul play of Brutus; of the perfidy of Arnold; and of the treachery of Judas Iscariot. In this country it has become a rare and an infrequent crime. Under popular government there is no excuse for it. Because of its enormity and lack of excuse, it is infrequent, and its perils either to the State or to the nation are but minimum. Against it the people would wage a united and overwhelming war. In fact, successful treason as above defined, cannot be.

The treason of peace is less accurately defined. Indeed, it is without either constitutional or legal definition,

and is, therefore, unknown to the law. Yet it is more dangerous and deadly than the treason of war. Its breath withers. Its touch blights. It is crafty and subtle. It is machiavellian. It mines and saps the foundation of State and nation. Its approaches are so gradual as to be deceptive. The danger is neither comprehended nor seen until the walls begin to crumble. It corrupts the people. It debauches citizenship. It pollutes the source of every civic current. It invades the seat of government and dictates administration in cities and in States. It appears in legislative assemblies and tarries familiarly in the halls of the national Congress. In the courts of justice it sometimes takes the place of counsel or of advocate. It creeps into the jury box and climbs upon the bench.

In argument it is ingenious, seductive and powerful. Its appeals are always made to the selfish interests of its auditors, but they are frequently presented under altruistic colors. Preaching the public weal, it wounds the body politic with secret knives, and feeds upon its life blood. It bears many names, but never its true one. It has many forms and wears many disguises, but at heart it is ever the same. Greed and avarice are its children, and the lust of gain is its hand-maiden. Through them it tempts the strong and the great, the captains of industry, the leaders of finance, and the managers of corporate and aggregate wealth, to the spoliation of the people and to the country's ruin. Striking examples of this truth are found on every hand.

The great transportation lines and lines of communication upon which the distribution of the products of the country depends are managed and used for the exclusive benefit of those who operate them as though they were purely private properties. In the very nature of things they cannot be such. Railroads are public

highways and the business of operating them is a public business. While there is, in a sense, private investment in them, their existence is due wholly to the fact that they are public utilities. When they cease to serve the public, the reason of their being ceases. The distribution of products is a greater problem than their production and the interests of the people and of all the people are so intimately and intricately woven into it as to give it every essential element of a public problem.

Modern conditions make the transportation tax in the way of freight rates a most potential factor in the country's welfare. It affects every product of the field, factory, shop or mine, and levies tribute on both producer and consumer. Up to the limit of fairness the tax can be justified; beyond that it cannot be palliated or excused. Under existing conditions freight rates determine not only where and when business may be done but who may do it. Those who pay the tax have no voice whatever in determining what it shall be. The carrier arbitrarily determines that for itself. A power like that is a dangerous power to confer upon any man or upon any set of men whose interests are a constant temptation to its abuse. As long as it exists it will be used to despoil the public for private gain. "Make the rate all the traffic will bear," will continue to be the motto of the men who possess it.

Having the power to make freight rates, and freight rates being the controlling factor in determining where, when and by whom business shall be done, the carrier becomes the master and the people, whom it was created to serve, become its servants.

The patriotism of peace demands the creation of some impartial tribunal to act as arbiter between the carrier and the people with power not only to decide that an existing rate is illegal and unjust, but with power to

determine what would be the legal and just rate and to declare and enforce the same. Upon this question the President of the United States has made himself the people's apostle and the people should, and I verily believe will, stand by him until a just solution of the problem is found.

One of the most insidious and influential forms of the undue influence of aggregated and incorporated wealth over official action is found in the custom of giving free transportation and free privileges by the railroad, telegraph, telephone and express companies to public officials. These favors are not bestowed upon men in private life, but are extended to them only upon their elevation to public place. They are given as compliments, and are bestowed quite generally, with here and there an exception, upon the officers of every department of the government, municipal, county or State. Indeed, it is quite the usual thing for officers whose duties do or may affect the interests of such companies, as against the interests of the public, to accept these favors from all such companies within their jurisdiction.

It is said in defense of the custom that such favors are mere gratuities or courtesies, the acceptance of which creates no obligation to the donor on the part of the officer receiving them, and that many honest men accept them and are not improperly influenced by them. It scarcely can be urged, however, that such favors are either given or accepted from a sense of civic pride or righteousness. The fact that some men receive them without any recognition of the obligation implied by such acceptance and are not improperly influenced thereby is an imperfect defense, for it is of itself a confession that other men who accept them are improperly influenced. There are no more practical business men in the world than the managers of the great railway,

telegraph and express corporations of the country, and these men would not annually give away to public officials thousands of dollars in value of such favors if the aggregate results of the custom were not beneficial to them. If the resultant benefits were not worth more to them than the value of the transportation or franks given, none would be issued.

The fact that the custom is continued year after year is strong evidence that it pays to continue it. No lawyer would permit a juror to remain upon a jury where high interests of his client were involved if he knew such juror had received and accepted substantial favors from the adverse party to the suit, and he would most certainly insist upon the discharge of such juror from the panel if he were to receive and accept such favors after he had been sworn as a juror in the cause. If, in any such case, the verdict went against his client, and after the verdict he learned the fact of the juror's acceptance of such favors from the hands of the successful party to the suit, there is no lawyer who would hesitate to make such fact the basis of a motion for a new trial, and there is no court that would not grant the motion upon proof of the charge made. The plea on the part of the offending litigant and juror that the favors given and received were mere courtesies and did not influence the verdict would be neither considered nor received as a sufficient answer.

The officials of the various municipalities and counties, and the officials of the several States, constitute the juries before whom are brought countless grave and important interests, upon the one side of which are the corporations, and upon the other side of which are the people. For this reason such officials have no right to use or accept substantial and continuing favors from the corporations during their terms of service. Where

the whole jury accepts them there need be no surprise if the people complain that the jury is packed against their interests. Right or wrong, ill or well-founded, such a feeling is an unwholesome one. The simple truth is that the custom is wrong and indefensible and often leads to abuses little short of scandal. Reduced to their last analysis, such favors are petty bribes. The fact that they sometimes fall short of their purpose is not a sufficient answer. The tendency of the custom is to make men—not all men by any means, but some men—servile to those from whom they are received. An end should be put to the custom. The abuse of free transportation and free franking privileges should stop.

The time to reform is now. In recognition of the plainest principles of right, in common honesty, in answer to the people's just demand and out of protection to themselves, public officials should discontinue the use or acceptance of such favors.

Under the present administration in Indiana, State offices have ceased to be brokerage offices for the dispensation of such gratuities, either to State officials or to members of the General Assembly, or to the friends of either. It is fast coming to a condition where a conscientious public officer will not accept free transportation, and where a dishonest one will not dare to do so.

Greed, avarice and lust of gain, themselves children of the treason of peace, are prolific in the production of a swarm of evils affecting the welfare of society and the interests of the State and nation, but which are either insufficiently reached by the law, or are wholly outside of the law's jurisdiction. The only remedy for these lies in the people themselves, in the moral sense and quickened conscience of the country's citizenship.

Among these evils are the peculation and misapplication of public funds, the plundering and the spoliation

of the people in diverse and sundry ways, and the betrayal of official trusts and obligations, which, in the last few years, have disgraced many cities, several States and the nation itself, and which have shamed our people and our civilization.

The patriotism of peace has certainly reached low tide when the story of bribery, defalcation and graft written by the cities of St. Louis, Chicago, Pittsburg, Milwaukee, and Philadelphia, and by the States of New Jersey, Connecticut, Rhode Island, Pennsylvania, California and Oregon, is possible. Only a perverted public conscience could produce the fraud and corruption which has recently characterized the great postal and land departments of the national government. With a public conscience alive to the enormity of these crimes, they would not have been committed. There is little moral sensibility or appreciation of civic obligation left when officials in so many departments of the public service are willing to prostitute their positions to private ends for a money consideration. And they would not do so did they not believe by your silence and acquiescence that you are willing that they should. I do not misinterpret the public thought, nor overstate the conditions.

In my own State a prominent citizen, who was but recently himself in public office, is in hiding, a fugitive from home and family, for attempting to bribe a member of the General Assembly of the State. In California four members of the General Assembly have been expelled from that body, and are either now being punished or are under indictment for bribery. In Arkansas five members of the General Assembly are under arrest upon a like charge. In Oregon the United States District Attorney awaits trial upon a charge of conspiracy to defraud the Federal Government. Six members of the

National Congress,—three of the House of Representatives and three of the Senate,—have either been found guilty of, or are under indictment for, accepting bribes to betray their constituency or conspiring to defraud the government. Municipal, State and national legislation is all but bought and sold in the open market. There are men who are willing to buy, and others who are willing to sell, the privilege of making laws, the power to suspend statutes and the authority to pronounce judicial judgments,—privileges, powers and authority which belong alone to the people, save as they are delegated to them by their chosen representatives, to be used, when so delegated, as the most sacred trust that can come into the hands of a citizen.

These crimes are not within the constitutional or legal definition of treason. They are given softer names by the law, and are visited by lighter punishment; but, before the country and in the forum of the American conscience they ought to be treason,—treason the meanest and the most dangerous possible,—and the men who commit them ought to be held as traitors to the country and the people whose commissions they bear. Unless such men be driven from public life, and a higher sense of civic duty be found in their successors, liberty in this land will soon come to mean license, and this government, betrayed by its own sons, will go the way of the ancient republics. It was, I think, this condition which recently led Governor Folk, of Missouri, to declare a great truth in the aphorism: "The treason of peace is more dangerous than the treason of war, and the patriotism of the ballot in a free country is even more necessary than the patriotism of the bullet."

But I am an optimist and not a pessimist. I believe in both my countrymen and in my country. There are multiplying signs throughout the land of improvement in

both public and private affairs. Higher standards of citizenship, of civic duty and of public obligation are being raised. The people are being awakened. There is a growing and an increasing respect and regard for the sacredness of the law that is hopeful and reassuring. The public conscience is quickening into life and is becoming sane again. Wrong-doers are being brought to trial and punishment. Apostles of the law and of a "square deal" are appearing in many States. Men like the governor of this goodly State of Kansas, and like the governors of Minnesota, of Wisconsin, and of Missouri, are directing the popular thought and leading the people back into safer ways. These men are not serving simply the people of their several communities, or the people of their several commonwealths. They are serving all the people throughout the country, and they deserve the confidence and the support of every man or woman who believes in higher ideals of citizenship and of official service.

Something in this line is being done in Indiana. A few months since, through the partiality of my countrymen, it became my duty to assume the office of chief executive of that State. As a condition precedent to my entering upon the discharge of these duties, I was required in the presence of many of my fellow citizens, and in the most public and solemn manner, to take upon myself an obligation relative to my conduct touching the performance of such duties. Among the terms and the conditions of the obligation I was required to assume, was one to support the constitution of the State. By the force and terms of that obligation the constitution became the chart by which my course was to be steered. In that chart is an express provision requiring the Governor of the State "to take care that the laws be faithfully executed." I did not take the

oath administered to me as a condition precedent to the performance of the duties of the office, of my own volition. I took it upon me because the constitution of the State required it; because the law required it, and because the people themselves required it. I had no choice in the matter. To me there was something in the obligation taken more than mere form or ceremony. I took it to mean what it said and what its terms implied, and that I was expected to do what I then and there so solemnly promised I would do. I did not think the people of the State would jest about so solemn a matter. If they did not intend that I should keep that obligation, they had no right to lay it upon my conscience.

Upon assuming the duties of the office, I looked about me and saw in many sections of the State, and especially in certain cities in which by provision of the law I had particular and peculiar responsibility, that many laws of the State touching the morals of the people, were openly and flagrantly violated day after day. These conditions had been permitted to go on for many years, growing worse, as such things always do, with each succeeding year. No effort at prosecution or punishment had been or was being made. It seemed to be taken as a matter of course that these things should be. Pool selling at every racing meet and gambling of various kinds were open and notorious. Slot machines, at which children played and lost their penny savings, were so common as to elicit no comment. Sales of intoxicating liquors were being made at unlawful hours and on forbidden days. Wine rooms were open, where intoxicating liquors were sold without license, and where lewd women and bad men and beardless boys nightly congregated.

Seeing these things, I did not stop to debate the propriety of the laws which forbade them. It was not

for me to determine whether they were wholesome laws or not. It was enough for me to know that they were the law. I could not choose which law I would enforce. My obligation was to take care that the laws, all laws, should be faithfully executed. For me there was left no other choice. Therefore I insisted that all laws should be obeyed by all citizens everywhere, and I declare to you tonight, speaking as the chief executive of one of the States of this Republic, that no higher obligation rests or can rest upon any citizen of any State, than obedience to the law and to all the laws whatsoever they may be. It is the duty of the executive to enforce the law. It is the duty of the citizen to abide the law. As an executive I may not choose which law I will enforce. As a citizen you may not choose which law you will abide. If my friend here may select what law he will keep and what law he will disregard, so may his neighbor, and so may I, and so may my neighbor. In its last analysis that means that no law shall be enforced, and the enforcement of no law means the suspension of all law, and the suspension of all law means anarchy, and for anarchy there is no room in the constitution of the State of Indiana, nor in that of any State in the Federal Union. The law as it is, must be enforced and obeyed, whatever the executive or the citizen may think of the propriety of its enactment. The question of the propriety of a statute is not within executive jurisdiction. It belongs alone to the legislative department of the government.

Some criticism has followed the adoption of that policy, but that I expected. The choice was made with the full knowledge of its consequences and after due deliberation. It has been urged that such a policy will be detrimental to the Republican party. I do not think so. For years I have acknowledged allegiance to the

Republican party because that party has presented to me the highest means to the accomplishment of an end I have greatly desired,—sound public policies and clean administration of governmental affairs. Whenever the Republican party ceases to be to me the highest and best means by which to obtain that result, it, by its own act, cancels its claim upon my suffrage. But be that as it may, I do not believe the consistent and impartial enforcement of the law, or the requirement that official obligation shall be sacredly observed, or that public office shall be administered for the public welfare rather than for private gain, will injure the Republican party.

Others have urged that the choice made and the policy adopted will deprive me of future political preferment. About that I am not greatly concerned. If it does, I am willing to pay the price. My personal ambition is a little thing compared with the weal of the commonwealth in which I live, and of the three millions of people who inhabit it, and if it shall come to pass that the sacrifice of that ambition is to be made, I am prepared to make it. If compelled to choose, I would rather be the humblest citizen of a good people of a good State, than to hold the highest office in the gift of a bad people of a corrupt State. There can neither be a good people nor a good State where the law is not held in devout esteem by both those who govern and those who are governed.

As a people we have wandered far from the safe and the simple way. The return will necessarily be slow and in some instances painful. Some men will fall by the wayside. Some may even feel the hand of the law, whose provisions they have trampled upon, and whose spirit they have outraged, but the return must be made. The problems before us are complex and difficult. Our

patience and our intelligence will be severely tried, but we shall not give up the fight, nor shall we fail of ultimate victory. We will never consent to lose in time of peace what our fathers founded and established in time of war. Liberty, buttressed by law, shall be preserved. But to preserve it, we must learn the one great lesson essential to its preservation,—obedience to the law and a willingness to abide it.

Here there are no king-made dignities; no parchment-made nobilities; no rank having for its origin the caprice of royalty. Happily for us, we

> "Know naught of the golden promises of kings;
> Know naught of coronets and stars and strings."

Our fathers made the law the only sovereign. They bequeathed to us no majesty save the majesty of the law. Wrapped and enfolded in the law is the sovereignty of the nation. In it is freedom's only safeguard. Without the law there is no such thing as liberty anywhere. And he who refuses to respect it, or to recognize its majesty, or who fails to yield prompt and loyal obedience to its mandates, does but pull down upon himself and upon his children the pillars of his own house. He sins against his country, its institutions and his kind. The man that strikes the law, wounds the State, stabs the vitals of the government that protects him, and dishonors his own free citizenship. For him there is no place or room in all the Republic. For him there should be no flag and no country anywhere. And this applies with equal force to all men, to the rich and to the poor, to the great and to the small, to the capitalist and to the laborer, to the public official and to the private citizen. Before the law all these are equal. This is at once the glory and the strength of our government and of our institutions.

In this evangel of reform all citizens can assist. In fact, there is beautiful fighting all along the line. No man need stand out for lack of opportunity or of invitation to go in. But I know of no class of citizens that has so rare an opportunity to spread it among the people, or who can do so much to make it effective, as the Christian ministry of the country. You stand in the relation of teacher to the masses. You mold public opinion. You can render no greater service to the country than by preaching this evangel of obedience to the law, along with the gospel of the Christ. The two go well together. There is a close affinity, in every popular government, between patriotism and religion. The two are inseparable. Jesus, the Christ, Son of the Omnipotent, child of the Nazarene carpenter, still presents to the world the highest exemplification of both patriotism and religion. Jesus, the Christ! How colossal, how majestic His character, even after the lapse of nineteen hundred years, and yet how gentle, how loving, how merciful!

MEMORIAL DAY ADDRESS.

Delivered at Pawpaw, Indiana, May 30, 1905.

We are met again in memory of the dead who, in life, wore the uniform of the republic; in memory of all the dead who wore that uniform, wheresoever they sleep, and whatsoever place they filled; in memory of the minute-men at Lexington, of the dead at Bunker Hill, of those who died at Quebec, of the starved and pinched who froze and hungered and suffered at Valley Forge, of Polander and Frenchman and German, who marched and fought with Washington and shared with him and with Hamilton the glory of Yorktown and the triumph of the ragged Continental; we are met in memory of those who died in the scourge of Indian wars, in the midnight foray, by burning cabins, or the smouldering embers of consumed homes whose dying eyes fell upon the white upturned faces of wife and child, lying dead in the solitude of the wilderness beneath the stars; in memory of those who fell at Lundy's Lane, at New Orleans, at Palo Alto, at Resaca, at Buena Vista, at Monterey and at Chapultepec; at Bull Run, at Shiloh, at Stone River, in the Peninsular campaign, at Fredericksburg, at Chancellorsville, at Antietam, at Vicksburg, at Gettysburg, on the campaign to Atlanta, in the Wilderness, and in the hundred other battles of the Civil War; at El Caney, at San Juan, and on the far away islands of the seas.

We have met in memory of all the sailors who died on

ship board in conflicts on the lakes or on the sea; of those who fell on the Constitution, on the Lawrence, on the Chesapeake, on the Hartford, on the Monitor, on the United States, on the Hornet, on the Essex, on the Saratoga, on the Hyder Ally, on the Wasp, on the Kearsarge, on the Bon Homme Richard, or the Cumberland. In memory of Wayne, of Putnam, of Greene, and of Warren; of Allen, of Starke, of Sumpter, and of Marion; of Gates, of Knox, and of Montgomery; of Hamilton, and of Washington.

We have met in memory of Ellsworth, of Jasper, and of Hale; of Jackson, of Scott, of Taylor, and of the Harrisons; of Lyon, of Sigel, of Pleasonton, of Slocum, of Miller, and of Mansfield; of Sumner, of Franklin, of Rosecrans, of Halleck, and of Hancock; of Kilpatrick, of Custer, of Doubleday, and of Kearney; of Hooker, of Burnside, of Meade, and of McClellan; of Reynolds, of Sedgwick, of McPherson, of Logan, and of Thomas; of Gridley, and of Lawton; of Sheridan, of Sherman, and of Grant; of Hayes, of Garfield, and of McKinley. In memory of Worden, of Porter, of Stewart, and of Farragut; of Bainbridge, of McDonough, of Hull, and of Perry; of Blakeley, of Barney, of Decatur, and of Winslow; of Sampson, of Paul Jones, and of Lawrence.

We have met in memory of the three hundred forty-six thousand two hundred sixty-two dead, who sleep in the eighty-three national cemeteries of the Republic; aye! of the one hundred fifty-one thousand seven hundren nameless and unknown ones who are gathered there,

> "On fame's eternal camping ground,"

sleeping

> "The sleep that knows no breaking,
> Morn of toil, nor night of waking."

In memory of those whose uncoffined forms are

wrapped in the clay and sands of Canada, of Mexico, of Cuba, and of Luzon. In memory of those who suffered and died in prisons, in the sugar houses, in the churches, and in the prison ships of the Revolution; in Millen, in Libby, and in Andersonville.

This day with its beautiful and sacred ceremony of flowers is for all. In the democracy of death all are equal. In the republic of the grave there is no rank. And in the heart of the nation, where are stored and enshrined the memories of a century and twenty-nine years of history,—history replete with sublime achievement and unselfish and courageous sacrifice,—there is no partiality for shoulder strap or star. The little drummer boy, with crushed and faded cap, and the great captain with gold-trimmed and plumed chapeau, are alike the recipients of our gratitude and affection. Between them we make no distinction in memory, in floral tribute, or in our love. On the walls of the nation's memory, the musket and the sword, the blouse and the star, hang side by side. Each is a badge of spotless fame and fadeless glory. Together they constitute a priceless heritage. The nameless private who sleeps unknown beneath the pines of the Southland is as dear to the great heart of the people on this day as the mightiest general who rests in the sacred soil of Arlington, or as the great captain who sleeps on the banks of the beautiful and historic Hudson. Private and officer, chieftain and man, are all heroes. Each made tender of all he had. There was no reservation. All—life itself—was freely given. And no man hath greater love than that. More than that the measure of human greatness cannot hold. Beyond that point comparison cannot be projected. Within the finite there is nothing beyond it. It is the *ne plus ultra* of mortal valor.

While this day is observed in the memory of our

soldier dead in whatever war they served, it is, in a special sense, dedicated to the dead of the great Civil War. It may be that this is true because its observance was first instituted by the survivors of the great struggle in memory of their fallen comrades. But it is also true for other and more enduring reasons,—because of the magnitude of the conflict, the number engaged, the consanguinity of the foe, the unparalleled fortitude and devotion of the participants, the superlative sacrifices made at home and in the field, the character of the battles fought, and the immeasurable value of the issue involved. Measured by these standards, all other wars in which the Republic has been engaged fade into insignificance, and all battles sink into mere skirmishes.

By this I do not disparage the valor or the devotion of the Continental soldier, nor of the dead of 1812, nor the sacrifice or courage of those who fell in Mexico, or upon the plains, or on the mountains of the West; nor do I pluck a single laurel from the brow of the gallant ones who died facing the red glare of Spanish anger in Cuba, nor from the heroes who drove the yellow flag of Spain from the islands and waters of two seas. I have already said, they gave all the measure of human greatness could hold. More than that they could not do.

And yet the greater struggle left the deeper impress upon the nation, and the more enduring one. We measure courage, devotion, and soldierly virtue, whether before or after, by the standards and precedents of that contest, and we will continue to do so for years yet unnumbered. In the very nature of things it is impossible that the Civil War will ever be duplicated. Five centuries hence it will still stand alone in its awful immensity, and unparalleled. For these reasons I speak especially of that war, its lessons, and the duties forged in its heat and flame. Time has swept its scenes and incidents

into the ocean of a remorseless past. The forty years that have intervened since its close have softened its asperities and filled the life of the nation with new thought and new purpose. The soul wounds inflicted then are now healed and are no longer painful. It, too, has become a sacred, solemn memory, forever associated with the recollection of those for whose coming we long watched and waited, but who never came. It no longer embitters or corrodes. Today it falls upon our lives with the consoling tenderness of a benediction. It has ceased to blight. On the contrary, it ennobles and inspires and stirs the hearts of old and young on this anniversary, filled as it is with ceremony and song and oratory and flowers and the high resolve of civic virtue.

Here, this day, and at this shrine, we renew our faith in the Republic and in its institutions. In the waters of this fountain we are re-baptized unto worship of freedom and love of country. Here we pledge ourselves anew to the defense of liberty and the faithful performance of the high duties of free citizenship; and here we teach our children the value of self-denial and of sacrifice and the meaning of the flag. It is this fact that makes Memorial Day the holiest day in the calendar of the accumulating years; a day of highest value to all the people, and of rarest worth to the nation; a day rich in the exemplification of the duties and of the rewards of American citizenship; a day, not for the benefit of the dead, but for the good of the living. What we do here is not and can never be of any import to the dead. There is nothing in all the earth that we can do for them. Asleep in death, they are past our help. Careless of the sunshine and the storm, they are beyond our censure or our praise. We can add to them no glory. We cannot give them immortality. Their destiny, so far as the influence of our lives is concerned, is fixed and fixed

forever. They no longer need us, but we need them. Without them—what they said and did and the history by them written—we would be poor indeed, and good citizenship would be for us far more difficult of attainment. Because of our own needs, we cannot forget them. The beautiful in their lives is to us like the beauty of the lilies; the memory of their good deeds, like the fragrance of the roses; their virtues, like the sweetness of ripened fruit; and their examples, like unto lighted torches set at intervals upon our pathway. In honoring them we exalt ourselves. By the remembrance of their devotion, we ennoble our own lives, and by eschewing their faults and emulating their virtues we develop purer, stronger characters within ourselves, and attain a higher and more glorious citizenship.

Within a year I have read again and again in the newspapers of great battles fought in the distant east, of the little brown Japanese carrying position after position supposed to be impregnable. And my mind ran back to the time when, under the starry banner of this Republic, Commodore Perry first broke into the Flowery Kingdom and taught them the possibilities of a higher citizenship, and, running on through the half-century intervening since then, I thought of the many hundreds of Japanese who have learned of us the value of free institutions, and I said, "It's America! The spirit of America in the hearts of the Japanese! The spirit of America fighting in Manchuria and on Oriental seas!"

We are a busy and a thoughtless people, but we are never ungrateful and unpatriotic. We love the land in which we live, its history, its traditions, and its institutions. This "Union of States," this "Many in One," this "Great Republic," is something more to us, even in our most careless moods, than an intangible creation

of the law called a State. In our most prosaic and materialistic moments, we cannot think of her as so much inanimate territory. She is more than that. She is a living, breathing entity, "endowed with moral character, capable of faith, of hope, of memory, of pride, and of joy, of courage, of heroism, of honor, and of shame." She is a beautiful personality—a mother who gives birth to sons and daughters; who nurtures them in childhood; who sustains them in manhood and womanhood; who shelters them in their old age, and at their death receives them again into her bosom. When her children become great, or win distinction, we see in them the mother. When they do heroic things or make great sacrifices for the world's good, we feel that it is she achieving through them. Praise of them does but acclaim her glory. Their loftiest deeds do but bespeak her purpose. To us her voice is still the Infinite; her call, the command of God.

The Union, ah! the Union! Sown in weakness, but raised in power, there is in her something of the immortal. Her children may die, but she lives on, embodying in her personality the nobility of their lives, refined and purified; and the glory of their achievements intensified and made radiant. In her the past is transformed, to-day, and lives again. Upon her brow the sunsets of the yesterdays meet and mingle with the dawns of the to-morrows. In her hands is fulfillment. On her lips is prophecy. We have but to look upon her to behold what her sons have done, what they now are, and what they are to be.

"We love every inch of her prairieland,
Each stone on her mountain's side;
We love every drop of water clear,
That flows in her rivers wide;

We love every tree, every blade of grass,
Within Columbia's gates;
The Queen of the earth is the land of our birth,
Our own United States."

Let us, then, give this day to the memory of our dead. Let us give it willingly, gratefully and without reserve. Let us hallow it with tears, with solemn meditation and with high resolves. It is too sacred to be desecrated by pleasure seeking, by boisterous sports, by shouts of joy, or by loud acclaim. It is too solemn for noisy demonstration. And it ought to be kept by this people, sacredly, solemnly kept, until the latest generation. Wherever they have fallen, our love has sought out our soldier dead. We have gathered their formless dust from hillside and valley, from plain and from forest, into cemeteries, owned and maintained by the nation. We have devoted thousands of millions of dollars to their widows and their orphans and their surviving comrades. We have builded State and national homes in which to shelter the survivors in their declining years. We have erected monuments to their memory and established memorial halls, and have oft declared by word and deed the sincerity of our devotion. How then can we fail to keep this day? How neglect its beautiful and helpful ceremonies? How forget its sad and solemn rites? Or how ignore its high and holy duties? On this day and at this shrine, let us breathe one common prayer:

"God of our fathers, * * * *
Lord God of Hosts, be with us yet,
Lest we forget, lest we forget."

It is proper on such occasions we should recount such facts of the war of the Union as tend to disclose the character of the struggle, the courage of the contestants and the losses sustained. I know of no better way to

do this in the brief time at my command than to call your attention to the ten greatest battles with their attendant losses:

1. Fredericksburg, fought December 13, 1862; killed, 1,138; wounded, 9,105; total 10,243.
2. Stone River, fought January 1 to 3, 1863; killed, 1,538; wounded, 7,247; total 8,785.
3. Seven Days before Richmond, fought June and July, 1862; killed, 1,582; wounded, 7,709; total, 9,291.
4. Shiloh, fought April 6 and 7, 1862; killed, 1,614; wounded, 7,721; total, 9,335.
5. Chickamauga, fought September 19 and 20, 1863; killed, 1,687; wounded, 9,262; total, 10,949.
6. Cold Harbor, fought June 1 to 3; killed, 1,705; wounded, 9,042; total, 10,747.
7. Chancellorsville, fought May 1 to 4, 1863; killed, 1,750; wounded, 8,250; total, 10,000.
8. Antietam, fought September 16 and 17, 1862; killed, 2,010; wounded, 9,416; total, 11,426.
9. Gettysburg, fought July 1 to 3, 1863; killed, 2,834; wounded, 13,709; total, 16,543.
10. Wilderness, including Spottsylvania, fought May 5 to 12, 1864; killed, 3,288; wounded, 22,298; total, 25,586.

Total killed in these ten battles, 19,146; died of wounds immediately after them, 13,402; total immediate deaths in them, 32,548; total wounded in them, 122,903.

These losses constitute less than one-third of the total number killed and wounded in action during the war. The total number killed in action was 60,000; the total number dying of wounds immediately after battle was 40,000; total, 100,000.

Died of disease, 200,000; permanently disabled by disease and wounds, 200,000; total Union losses, 500,000.

These are only the Union losses. The South perhaps lost an equal or a greater number, making a total loss to the nation of a million men. Of the Union dead, 346,262 have received burial in the various national cemeteries of the country. These cemeteries are located in twenty-six different States and territories, and one in the city of Mexico. These dead gave their lives on

the field of battle. To them death came quick and sudden, often in the whirlwind of the charge, and always under the inspiration that springs from contending numbers.

While it requires courage of a high order to charge a line of bristling bayonets and loaded muskets, or to walk into the flaming jaws of cannon belching a storm of shot and shell, there is yet a higher and a rarer courage and severer test of loyalty. It is the courage that sustains when there is naught to do but to watch and wait in hopeless confinement, where escape is impossible, and where slow and torturing death is for days and weeks in sight. It is the loyalty that stands steadfast and unflinching amid the delirium of fever, the wasting of disease, and the gnawing of an unsatisfied and ever increasing thirst and hunger. Of this finer courage and rarer loyalty, there was no lack. Both had their highest exemplification in the loyalty of the Union soldiers confined in the prison pens of the South. This is especially true of Andersonville.

There, thirty thousand Union prisoners were crowded into an open pen, enclosing but twenty-seven acres of land, in an unhealthful locality, with a swamp in the center, and but a single sluggish and choked stream. There these men were huddled, without shelter or protection from either the heat or the cold, in tattered clothing, without sufficient water or food, victims of the most brutal cruelties and of lingering, wasting disease. Twelve thousand four hundred sixty-two died in thirteen months, and of these six hundred forty were and are yet unknown. Ninety-seven died in a single day. I do not pause to paint the horrors of their surroundings. They were and are indescribable. Into the midst of such suffering as no words can describe or pen portray the tempter came, again and again, assuring the famished

victims of the failure of the Union arms, of the triumph of the Confederacy and of the overthrow of the Republic, offering clothing, food and freedom, if they would only forswear the Union and renounce its flag; but they did not yield. They died of disease, of thirst and hunger, amid unparalleled suffering and loathsomeness, and refused freedom and life rather than betray their country or dishonor its flag. The history of the race furnishes no similar example of courage and loyalty in all its annals.

From hunger and thirst, the pain of hope deferred, and dreams unrealized, they passed through Glory's gates and walk today in Paradise. Here let us stop and think a minute, while we count the cost of this banner of the stars their valor reared anew. For each of its forty-five stars nine thousand men gave up their lives in battle, and fifty-five hundred more lingered through weary months and years, maimed by wounds, or tortured by disease, until God gave them furlough. Each of its thirteen stripes represents fifty-one thousand lives consumed in war's fierce flame, or lost because of the injuries there received. Into its field of blue—tincture of the sky—have gone a million women's prayers and hopes and fears and tears.

"Woven in its stripes of red are hearts that bled;
Wrapped in its folds are heroes dead;
Tears in every fiber of its thread;
Grand, priceless banner of the free."

This blood-bought land, with its vast area, its mountains and plains, its lakes and its rivers, its fields and gardens, its shops and mines, its immense commerce, foreign and domestic, its ships and means of communica-

tion and transportation, and its countless forms of property and of wealth; the fair fabric of this free government, with its institutions, man-reared but Heaven-born, guaranteeing freedom of thought and of speech, ownership of property and individual opportunity, vouchsafing civil and religious liberty, and securing political sovereignty to each of its citizens; this great nation, with its one hundred and twenty-nine years of glorified history, its resources and its power, its wealth of thought and of intellect, its numerous and virile population, its high place among the peoples of the earth, and its immeasurable opportunity for good; these constitute our inheritance and we are charged with their transmission to posterity.

Upon no other people rests such tremendous responsibility. To meet it as becomes our high estate, we must dedicate our lives to wholesome thought and righteous living. We must meet with strength and courage the civic duties of each day. Government must be more faithfully administered and higher standards of private and of public service must be attained. Graft and peculation must cease, both in private and in public life. Bribery must have an end in city, in State and in nation. Venal councils and vendible legislatures must cease to exist. The well and source of power—the *people*—must not be further or longer corrupted either in their franchise or in their public thinking. The greed of capital must be curbed and the unreasonableness of labor tempered, to the end that the citizen shall be no longer mulcted in the purchase of the necessaries of life by the unlawful combinations of the one, or the arbitrary actions of the other. Veneration for the law must be restored to the hearts of the people. Its majesty must be re-established among us. When grave crimes are committed, we must cease to burn and kill, and must

become content in all instances, whatever the provocation, to wait the orderly process of the law. In this way, and this way only, can the law be vindicated, or the institutions of the country be preserved. Every man who wilfully or corruptly steps outside the law as it is written is a public enemy and should be dealt with as such. Having himself drawn the sword, he must expect to perish by the sword.

These are homely truths, bluntly told, but they are wholesome ones, and have been already too long neglected by us as a free people. For years we have been, and still are, sowing the wind, and we are daily reaping the whirlwind and must needs continue to do so until we change the sowing. If this day and its observance shall create within us higher ideals of life and civic duty, call us back to righteous ways and give us moral courage to walk therein, it will have been of lasting value to us and to our children. When it ceases to do this, it will cease to be observed as becomes its holy origin, or to stand for that for which they fought, in whose name it was instituted, and will soon thereafter fall from the calendar of an ungrateful and an unworthy people.

OUR STATE CHARITIES.

An Impromptu Address Delivered on the Occasion of the Fourteenth Annual Meeting of the State Conference of Charities and Corrections, Held at Vincennes, Indiana, October 28-31, 1905.

We are met this afternoon in the name of charity, the sweetest and the most gracious of all the graces. I congratulate the members of the State Conference of Charities upon the fact that they are privileged to meet in this historic city, among a people so hospitable and so greatly interested in the work of the Conference as it is evident this people is. It is both a privilege and a pleasure to have the opportunity to congratulate this organization upon the work it has done in recent years, upon the work it is now doing, upon the work it is to do.

The subject assigned me, "Our State Charities and Their Present Needs," is one that perhaps it would have been better to have assigned to some one whose experience in the field of charitable work, as recognized and carried on by this organization, has been greater than mine; some one whose present interest and daily participation in the work is greater than mine has been. I really suppose, however, the subject was assigned to me for what I might term the "canoe" reason. They say the less a man knows about a canoe the more he gets out of it.

This is a day of concentration and centralization; of purpose and thought,—a day, if you please, of organization, of mergers. We have learned that a number of

men having common purposes, bound together, acting together, believing in the same purpose, accomplish more on a given line than the same number of men could do by acting as individuals. In the field of commerce and transportation and in all the industrial world, we have constant exemplification of that truth. Many industries are allied, having really one management. In that way we greatly economize, save the waste, and make good all the product. Men have learned to be practical even in the matter of charity, and so we have today organized charities, the purpose being to make use, without loss or waste, of the thought and purpose and philanthropy of each of the individuals interested. And in a way, the great State of Indiana has organized itself into a charitable institution. Really, the world itself, I think, has undergone in recent years a great change and taken on a new meaning, a softer, a gentler meaning than it had in the olden times. The spirit of organized charities, as exemplified by the organizations of today, lies back of this hour. It lies far back of the years, and beyond the seas. It had its birth the next day after Gethsemane, in the words of the Christ, when in the midst of the agony of the cross He cried out, "Father, forgive them, they know not what they do." And so it has come that though men become defective because of their own ignorance or wilful ways, we are apt to say, "Father, forgive them, they know not what they do." We are apt to go a step farther yet and bind up the wound, pour ointment upon the bruise and give solace to the stricken soul; and all this had its origin and its birth in the blessed gospel and the teachings of the Christ.

I said that the State of Indiana had in a sense become a great charitable institution; and so it has, and I take great pride today in paying some feeble tribute to the

men and women of Indiana who have made present charity conditions possible in this State,—men and women who for years have been concentrating their lives in this one great purpose. It is a sublime thing to consecrate a life to a single purpose and follow it day after day without faltering, through evil and good report, through the sunshine and the storm, through the darkness and the sunlight, and there are more than a score of men and women in Indiana who are doing this day by day, many of them without recompense as money goes, many of them without compensation of any kind save that larger and more abundant compensation that comes from the knowledge of having relieved pain, soothed the suffering and cheered the despondent. There are men and women in Indiana who, for meager salaries, far less in amount than the same skill and learning would demand in private business, are giving day after day their thought, their skill, their learning, their very soul wealth and soul life to the cause of charity. When we meet men and women like these, who are willing to shut out the ambitions of life and consecrate all they have to one holy purpose—we ought to pay them the compliment of recognition, and I do it with pride and pleasure here this afternoon.

No State in the Union has made greater progress in recent years than the State of Indiana. Not many years ago, as a member of the Indiana State Senate, I saw defeated a measure looking to the non-partisan administration of state institutions. I saw a man of very great ability walk up and down the aisle of that legislative chamber declaring that these institutions belonged to his party because it was then dominant and in control; that they were a part of his party's spoils, and, to use his own language, "We propose to keep them so." In the light of present conditions it seems incredi-

ble that that could have been. But fifteen years have intervened since then. The changes have indeed been great. I do not speak in a partisan sense because the changes were instituted primarily under one of the great governors of the State of Indiana who did not belong to my political party, and I give him praise and credit and honor for his courageous stand. But in all the years from then till now it has been the policy of the State administration to keep the institutions of the State out of party politics, and to place them upon a higher plane. And we have succeeded as few of the States in the Union have succeeded, and it is a reason for gratification and felicitation on an occasion like this. And so I congratulate you that this is true.

A few months ago, when assuming the responsibilities devolving upon the governor, I had occasion to say in my inaugural address:

"These institutions have been placed upon a plane far above partisan politics, and there this administration intends to keep them. There shall be no backward step. Above all personal and party obligations, however sacred and binding they may be, I hold the good of the State and the welfare of its unfortunate wards. There shall be no removal of persons holding positions in any of such institutions except for the good of the institutions themselves. Upright and efficient service will guarantee continued tenure of position. Negligence and incompetent service will insure immediate removal."

That declaration has been religiously carried out by the present administration in every State institution. It will be religiously carried out to the end of the present administration. I take it no higher service could be rendered the people of the State than to keep the welfare and control of these children of the State and the State institutions out of partisan politics. So scrupulously

has the present administration observed the declaration set forth in the inaugural address to which I have referred, that to this hour no recommendation of any kind or character concerning the appointment of any subordinate has gone to any board or institution in the State. I have conceived it to be my duty to appoint the boards that manage these institutions, to hold them responsible for results and leave them and the superintendents under the law to select the best men to fill the several positions under them; and that policy will be adhered to. The man who holds a position in one of these institutions and gives full measure of faithful service need not fear for his tenure of office; but the man who holds a position in any one of them and betrays the trust imposed in him may expect swift and immediate removal from his position.

I think I may say in this connection that people who make charges against the management of any of the State institutions ought to use great care and consideration. The danger is, that speaking without full information they may do a great injustice not only to an individual, but to the institutions of the State and their inmates and to the fair name of the commonwealth. It is a grave responsibility, and a man ought not to accept it until he knows from information in his possession that his position is unassailable. Having such information he ought to be willing to lay it before the constituted authorities rather than to give it circulation without taking the opportunity to present it to such authorities. Where necessary, investigation that will lay the truth bare to all the people will be made; for these institutions are the institutions of the people. But when it is made, it will be made by the legally constituted authorities, along constituted and lawful lines, and not by irresponsible yellow journals, actuated by petty spite rather

than a concern for the welfare of the institutions themselves. Investigation will be made and the truth will be learned, the innocent vindicated and the guilty dismissed in every instance. But no one ought to pronounce a verdict simply because some one without evidence in his possession which he is willing to lay before the constituted authorities has said that this or that is true about a State institution. This is only fair to the people who manage these institutions and whose good names are at stake. It is fair, too, to the institutions themselves and to the place the State holds among the several States of the nation in charitable and philanthropic work.

It is a great pleasure to come to you this afternoon and be in a position to say that the administration is making progress in the ministration of the high trust confided to its care. The institutions are being managed better than ever before. They are managed with kindlier thought, with rarer skill and, in many instances, with less expenditure of money than ever before. One of the great problems before the management of each of these institutions is how to make your money go as far as possible and bring as much as possible to those who receive your charity. That is the great problem that is being solved in the State of Indiana better, in my judgment, than in any other State in this Union.

During the nine months ending July 31st, this year, the last period for which reports have been made, the State penal institutions have in some instances cost a little more per capita than they did the year before, but there is reason for it. In one or two of these institutions we are changing from the contract labor system to the industrial trade school system. In the State Reformatory that is especially true. In the State Prison we are preparing to install a plant for the manufacture of binder twine on State account that will be sold to the

farmers of the State directly. It will involve no competition with the labor of Indiana and it will result in cheaper product to the farmers of the State. At the same time, unless our hopes are blasted, and we do not believe they will be, it will result in a greater income to the State for the labor rendered by the inmates of these institutions. But temporarily, while changing from one form to the other, the cost has been slightly increased.

In the Prison, with an average daily attendance of 888, the cost of administration for the nine months named was $34,919, and the per capita cost $39.32. There was expended for subsistence $23,000 in round numbers, or $26.06 per capita. The total maintenance cost, including salaries and wages, food, clothing and such improvements as are made from the regular appropriation, was $102,000, or $115.02 per capita.

The State Reformatory, with an average of 1,042 inmates present during the nine months, had a total cost for administration of $45,000, and a per capita cost of $43.89; for subsistence, $26,000, or $25.01 per capita. The total maintenance expenses amounted to $117,000, or $112.98 per capita.

The Industrial School for Girls and Woman's Prison, had a per capita administration cost during the nine months of $43.01, a subsistence cost per capita of $22.46, and a total maintenance cost of $124.44 per capita.

The Indiana Boys' School had a cost of administration per capita of $31.82, of subsistence $19.00, and a total maintenance per capita of $115.09.

The average per capita cost of the correctional institutions was $115.15. Subsistence alone cost less than ten cents per day, and yet the food received is good and sufficient in quantity.

The same care and the same good results even in a

more marked degree obtain in the several charitable institutions of the state.

The Central Hospital for Insane, with an average population of 1,825 patients daily, was administered for the nine months at an average of $139.95 per capita. In the Northern Hospital for Insane the average was $113.03 per capita; in the Southern Hospital for Insane $120.68 per capita; in the Eastern Hospital for Insane $127.69 per capita. The hospital administered at least cost was the Northern.

The State Soldiers' Home at Lafayette had a total per capita cost of $120.01 for the nine months; the Soldiers' and Sailors' Orphans' Home, a per capita cost of $157.99; the Institution for the Deaf a per capita cost of $167.32; the Institution for the Blind a per capita cost of $229.32. The latter includes greater expenditure because of the character of instruction necessary and the fact that the children are blind. It is more expensive in its administration and teaching. In the School for Feeble-Minded Youth the per capita cost was $96.02.

For the nine months ending July 31, 1905, the average per capita cost of maintaing the correctional institutions was $115.15; of the benevolent institutions $129.15. It is a matter of profound congratulation that a trust so delicate and so high can be administered at so small a cost, and I congratulate you and the people who are managing these institutions upon the record made.

These institutions of the State by no means represent all the charitable work of the people of Indiana. Other organizations to which I have already referred are gathering from the by-ways and the hedges, from the lanes of danger, from homes of distress, from places where the human soul starves and languishes, those who cannot help themselves, and are reaching out to them generous, intelligent hands for their sustenance, for their

care, for their nurture and for their teaching. This Conference of Charities is held not alone in behalf of the State institutions, but in behalf of all the multiplied charitable institutions in the State, and in the name of every organization and every man and woman who gives any thing to organized charity. We meet that we may take counsel together, learn what each has learned elsewhere, what is best for the next day's work. These State conferences as a practical investment for the people of the State are worth many times more than they cost. They had their birth back yonder in the days when the Master lived and taught and left in the hearts of the people pity for a brother's misfortune. In the nineteen hundred years that have elapsed the thought has grown and developed until a meeting like this is a possibility, and I congratulate you.

But all the charitable work is not included in the State and non-State organizations of which we have spoken. Much is being done in another way, and, I think, to be frank with you, in a most unsatisfactory way. Charity is administered to the poor and indigent in the State at large through the county commissioners and the township trustees. There are some things in that connection to which I desire to call your attention, not in harsh criticism, but only that I may leave the knowledge of the fact with you and that you may among you find some way to minimize the expenditures of public money along this line.

To give you some idea of the extent of this work by the State, by these non-State institutions and through local authorities, permit me to say that on October 31, 1904, there were 10,000 males and 6,000 female dependents, defectives and delinquents in the various State, county and private charitable and correctional institutions, or a total of 16,000. In addition to these, 21,966

males and 24,043 females, or a total of 46,009 persons, received outdoor relief, during the year, making an aggregate of dependents, defectives and delinquents in the State during the year of 1904 of 62,578. I want you to carry away some thought of this. More than 62,000 people in Indiana as defectives or delinquents or dependents are receiving charity at the hands either of the institutions of the State or through the non-State institutions or through local authorities. That is a great number of people, greater than it should be in a day of prosperity such as this, when all men may find work at a remunerative wage.

Do not misunderstand me. I would not withhold one penny from the worthy need of any man. I would have no local officer be parsimonious in giving aid where aid is actually needed and the recipient is worthy. I would have him give quickly and cheerfully in such a case, because in such a case he who gives quickly gives twice; but, on the other hand, I think we ought to insist that money expended should be expended only upon full investigation and where the need is found to be a worthy one. Men who can work ought to be required to work in a time like this. Self-reliant, worthy citizenship is the best asset a State can have. But when we give charity to those who are not in need of it, we do but impoverish the State by pauperizing its citizenship and building up a class of dependents, a class we ought to be minimizing. What the State needs is a citizenship that will constitute an asset and not a liability, and every one who thus receives public funds is a liability so long as he continues to receive them.

There are some statistics along this line to which I want to call the attention of the people of this good city and of this good county. I speak in all kindliness, but I give you the truth as it is. You ought to be willing

to hear the truth, and if unsatisfactory you may be enabled to change the figures in years to come. I think I ought to say before I read the figures that you are already improving here in Vincennes township along this line, that you are administering local charity more economically than heretofore, and I want to make an appeal to the people of this community that you aid your local authorities where you can, to the end that they may be able to minimize the expenditure of your money.

I have figures for the year ending December 31, 1904, which indicate that Knox county gave to the poor, through the township trustees, a total of $7,942.79. In Vincennes township alone the total relief amounted to $5,498.72. I have an unpleasant truth to tell you, but it ought to be told, told kindly but firmly and to you, the people who are most directly interested. The population of Vincennes township is, in round numbes, 12,000. There is not another township in the whole State of Indiana of similar population which gave so much out-door aid to the poor as was given here in Vincennes township in 1904.

Let me show you how it compares with other townships in other counties having a similar population. Union township, in Montgomery county, containing the city of Crawfordsville, with a population of 11,000, gave $3,700; Noble township, in Wabash county, containing the city of Wabash, with a population of 11,000, expended $2,500; Columbus township, in Bartholomew county, containing the county seat, Columbus, with a population of 10,000, gave $1,900; Washington township, in Daviess county, containing the city of Washington, with a population of 11,000, gave $1,400; Monroe township, in Madison county, in which the city of Alexandria is located, with a population of

$11,000, expended $1,300; Peru township, in Miami county, in which the city of Peru is located, with a population of 10,000, expended $1,000; Huntington township, in Huntington county, in which the city of Huntington is located, with a population of 11,000, expended $712, and Madison township, in Jefferson county, in which the city of Madison is located, expended $900 in outdoor relief to the poor. Here are nine townships in nine different counties, each having a city similar in population and in the character of its people to the people of Vincennes and Vincennes township, and you see that this township has been expending more money year after year (if I were to go back of 1904 the figures would be worse,) for outdoor relief to the poor than any other township of similar size in the State. For instance, Union township, in Montgomery county, and Vincennes township, in Knox county, with a total population of 24,000 people, expended more than $9,000 last year for this purpose. The seven other townships just named in seven different counties, having seven cities substantially the same in character of inhabitants as the cities in Union and Vincennes townships, with a population of 78,900 people, expended $9,900 for a similar purpose. With more than three times the population, the total expenditure in these seven townships was but little in excess of the expenditures in the two townships. Or, to put it again, Union township, in Montgomery county, with a population of 11,000 people, expended within $250 as much for outdoor relief to the poor as the townships of Huntington, in Huntington county, Madison, in Jefferson county, Peru, in Miami county, and Monroe, in Madison county, although these four townships have almost four times as great a population. Put it in another way: Vincennes township, in Knox county, with a population of

12,000, expended $21 more money for this purpose than five other townships—the townships of Huntington, in Huntington county, Madison, in Jefferson county, Peru, in Miami county, Washington, in Daviess county, Monroe, in Madison county. The last named townships have a total population of 57,000 people, or nearly five times the population of Vincennes township, and yet you expended $21 more for this purpose than these five townships.

I mention these facts, not in an unkind spirit of criticism, but only to call your attention to them and to say to you that the authorities of this township are now improving the condition, and to appeal to you to help them reduce the expenditure for this purpose in this township to the minimum. It is your township; the funds are yours, and it is for you to decide.

There is another matter to which I wish to call your attention in this connection. It is said here and there in different localities, that for business and commercial reasons the law ought not to be too strictly enforced. I have heard it argued very earnestly by men I have thought conscientious, that a wide-open town, where the laws touching public morals are entirely disregarded; where wine rooms are permitted to run all night long, in which lewd women and bad men and beardless boys nightly congregate; where gambling dens are kept open day and night, where men who occupy positions in banks and as clerks in stores and who handle other people's money, may find opportunity to spend evening and midnight hours and gamble away, if they desire, public funds held by them; where the sale of intoxicating liquors upon Sundays, legal holidays and during forbidden hours, and to minors and drunken men is allowed—that all of these things are necessary, and that a wide-open town where these things can be carried on makes for good business

conditions in that town. Really, gentlemen, that is the one reason upon which such a condition could be defended, if defended at all, and I will show you in a moment that that position is absolutely without foundation; in fact, that it is not true; that in the very nature of things it cannot be true; that it does not make for the material or the commercial success and prosperity of a town. I will show you why it does not—because these institutions multiply again and again this dependent citizenship of which I have spoken, these defective children of the State that you are maintaining; they multiply again and again drunkenness and idleness upon the street.

Let me show you. If every city in the State of Indiana were to expend as much money as the city of Vincennes expends along the line of paying the fees and the charges of persons confined in the county jail for intoxication, it would cost the State of Indiana almost $100,000 a year for fees. I mean to say that the people confined in your jail last year under the charge of intoxication were sufficient in number to produce a charge in fees for their entrance and exit and their maintenance while there, which, if carried on in like ratio throughout the State, would average nearly $100,000. I am not arguing the question of temperance this afternoon; I am arguing only economic conditions. Much of the public intoxication in any city that results in a jail sentence comes after the hour of eleven o'clock, when, under the law, all these institutions should be closed. The drunken persons are carried to the county jail. They become a charge upon every man who lives in the county. The fees of the officers for admitting and discharging them and the cost of their maintenance while there, in this county alone, last year, cost you more than $800. But that is only a small part of it.

If the fees and charges for jail sentences, aggregating $100,000 in the State, as I have suggested, were all the penalty, it would not be so bad, but that is only a part of the penalty. That is the immediate result; the more remote results far out-number and out-weigh that in magnitude. From such conditions there are being constantly recruited the unfortunate dependents and defectives that fill up the other institutions of the State and become a burden amounting to more than $150 a year for each person so entering them. The point I make is, that obedience to the law, the closing at eleven o'clock of every place where intoxicating liquors are sold, and the keeping them closed until five o'clock in the morning, the closing of these evil resorts where dependents are manufactured, the sending out of your city the men who prey upon your boys and who make possible day after day public defalcation through gambling rooms and gambling tables and games of chance, minimize crime and dependency, and that they are, therefore, from an economical standpoint alone, worthy of your highest consideration.

It is not true that a wide-open town makes for the prosperity of a town. A wide-open town spreads the net for the feet of your boy and your girl. It spreads wide the door into which trusted officials go and gamble away funds that you have confided to their care. Within a very recent hour, fresh already in the mind of every man here, a trusted bank cashier gambled away the funds of his depositors in the city where he lived, in a midnight brothel, kept by those who believed an open town essential for business profit. The bank failed, and what does a bank failure mean? It means wide-spread distress; it means the loss of thousands of dollars of savings; it means disappointment; it means a blight that lies for years on every community where it occurs.

Fresh yet in your memories is that of an officer highly trusted by you, holding a high position in the State of Indiana, who gambled away your funds in an institution in this State which is run in defiance of the public law.

Do you think it pays? It never pays. It never will pay, and on economic lines alone every citizen of the State of Indiana ought to be willing to stand up for the maintenance of the law as it is. There is a revival of this feeling throughout the country, and I am glad it is not confined to the membership of any church or of any political party. I am as proud of Folk in Missouri as I am of Weaver in Philadelphia. I am as proud of Johnson in Minnesota as I am of LaFollette in Wisconsin. These men are performing a high service to you and to posterity, because they are teaching a higher, nobler gospel and calling you to higher, nobler and better citizenship. If you will make response, if you will live up to the ideals they present to you, you will minimize wonderfully the number of these children of the State, these defectives, these unfortunate dependent ones.

That little boy on the front seat, there, with bright eyes, rosy cheeks, a heart full of joy and gladness, a soul full of pride and hope and a life full of unparalleled opportunity, attracts my attention. Do you know why? He is the pledge of some woman and some man to the people of the State, to society, to the nation, that they will lead a decent life and that they will give him a fair deal and a fair chance in years to come; that they will not spread a net for his feet; that they will so conduct themselves that they will leave no scar on his soul. A grave responsibility, the highest pledge that a man or a woman can make, and in the name of the little boy and in the name of the children of the State, in the name of the men and women of the State, I appeal to you, citizens of Vincennes, now and every day, to be willing

not to die for the land in which you live, but to live for it, to live for its citizens, and to stand for the law and its enforcement and the order and repose of society, and to have the courage to put your hand against all these evils that make for the degradation of citizenship and the destruction of boys and girls. Do that, and in the years to come this banner of ours as it goes on its march across the world, over the seas and through distant lands, will bear the new message of hope, not alone of civic liberty, but of civic righteousness as well, to the people, and by and by become a fitting emblem to stand side by side in the ramparts of the world with the flag of the cross, having brought the same message of hope, of obedience, of liberty, of charity, of pity, and of good citizenship.

I have spoken not in criticism, but in kindly charity, because my heart is full of this great question. Our fathers fought their battles on fields of war and of carnage. They bore their part well. Some of them perished in the conflict, but they left to us a priceless heritage. And now we have a battle to fight, not like theirs, and yet a battle that requires better citizenship and a finer courage than even theirs required. It is a great thing to face the enemy on the field of battle and carry your life in your hands down through the struggle of war for the flag and for free institutions, but I sometimes think it takes a finer courage to live for the same flag and the same institutions in times of peace and to stand for the royal dignity of American citizenship and peace and law and order in the community in which you live. This is a day of peace, and may God help you and me to perform our duty as nobly as our fathers did theirs in the days of war. Let us live for a higher, a better and nobler citizenship, broader than church lines, broader than party lines. I have no confidence in those

holding to this or that belief because they belong to the Republican or Democratic party, but when both Republicans and Democrats have the same high purpose and the same high recognition of civic duty, I have hope for my country and hope for its institutions. When as a people we are united upon one proposition we are apt to solve that question correctly.

SHOULD A YOUNG MAN BE A CHRISTIAN? WHY?

Written for "The Ram's Horn."

I am asked, "Should a young man be a Christian?" The question is one of pre-eminent importance, but my answer is ready. I submit it without hesitation or delay and without reservation of any kind, and as quickly as my pen can write it. Here it is: *Yes, a young man should be a Christian.* And now that it is written I want that it shall stand. I want that it shall stand as my message to the young men of this generation. I want that it shall stand and be remembered when all else that I have written or spoken for the public, or ever shall write or speak, has faded from the thoughts and memories of men, for I have a clear and an abiding conviction that it is a correct answer to the great question. Let me write it again; and as I write, let me consecrate it with desire and prayer: *Yes, a young man should be a Christian.*

The other question, "*Why* should a young man be a Christian?" involves so much that it cannot be adequately answered in the seven hundred words remaining to me. I must confine myself, therefore, to three or four fundamental reasons and these must be briefly stated:

First. A young man should be a Christian because of his own immortal soul. Christian life and Christian experience is the sanest, surest and most perfect preparation for immortality offered to man. It is God's way of preparing men for eternity. And God's way is always the wisest and best way. The life, sacrifice and resurrection of His Son, the Christ, are God's guarantees,

both of immortality and of what is the most efficient preparation for its enjoyment. The "whosoever will" of the Christ is an appeal to every young man to be a Christian, for his own soul's sake. And from the standpoint of *personal gain* there can be no more cogent reason than, "*for his own soul's sake.*"

Second. He should be a Christian because of the contentment and the peace of mind Christian life and Christian experience will bring to him in this life. Christianity will teach him tranquillity of mind and how to attain it, and that is the perfection of wisdom. It will reveal to him the highest conceptions of life and duty the human mind can know, and implant in his heart the loftiest ideals of manhood to which man can aspire. It will unfold to him beauties of nature, beauties of life and beauties of human character which "none but the ransomed can ever know." It will transform transient joys into deep and abiding wells of happiness, and sorrows into blessings which will but chasten and sanctify and ennoble. And in the end it will pour his soul from the crucible without dross and as refined gold ready for the hand of the Great Alchemist.

Third. He should be a Christian because Christian life and Christian experience will make him a good citizen of his community, of his State and of the nation. Every genuine Christian is a good citizen, and every good citizen is an asset to the State, while every bad citizen is a liability. Wherever Christianity is, liberty dwells and has her abiding place. Where Christianity is not, liberty will not stay. If this land is to continue to be her habitation we must continue to be a Christian people. And we cannot long continue to be a Christian people unless the young men of the country become Christians. Therefore, viewed from the standpoint of citizenship alone, a young man should be a Christian.

Belief in sound economics, love of country, interest in the perpetuity of free institutions, and desire to see ourselves a victorious and a triumphant people, all conspire to coerce his decision and to make answer for him.

Fourth. A young man should be a Christian out of gratitude to God and to the Christ. This wondrous world, with its light and life, its land and sea;—the day, with its shadow and its sun-shine, and the majesty of its cloud and storm;—the night, with its infinities and its solitudes;—the universe, with its vaulted sky sprinkled and jeweled with suns and moons and countless stars and distant worlds afar;—his own mind, with its strange, stupendous power and its miracle of thought, of memory and of imagination;—his own heart, with its yearnings, its affections and its loves;—his own soul, with its capacity to appreciate and to aspire,—itself indefinable and intangible, and yet possessed of an innate entity of its own and endowed with the divine attribute of immortality—are but multiplied evidences of God's goodness and of the weight and reason of man's obligation to Him.

And then, in addition to man's obligation to God, the Father, there is his debt to Christ, the Son. Once we admit the truth of the New Testament story of the Christ, He becomes our elder brother, *our Savior*, and our debt of gratitude assumes the proportions of an immeasurable obligation. With the facts of Gethsemane and of Calvary confessed, a life of love and devotion alone can satisfy His claim upon every young man that is or ever shall be. Let the young man remember that "Greater love hath no man than this, that a man lay down his life for his friends," and that this the Christ has done for him, and he will need go no further to find an all-sufficient reason why he should be a Christian.

STATESMANSHIP AND POLITICS

An Address Delivered on the Occasion of the Presentation of a Portrait of Salmon P. Chase to the United States Courts at Springfield, Ill., October 7, '05.

May it Please the Court:

To American ears these are familiar terms. Synonymous in their highest and best sense, they differ widely in the common acceptation of their meaning. In the popular mind there is indeed a wide difference between them. It is a far cry from the politician to the statesman.

A statesman is said to be one versed in the art of government or who exhibits conspicuous ability and sagacity in the direction of public affairs. The term statesmanship refers to the qualifications, duties and employment of a statesman, or to the practice of the science of government.

Politics is said to be the art of influencing public opinion, attracting and marshaling the voters, and obtaining and distributing public patronage as far as the possession of office may depend upon the political opinions or political services of individuals. In the popular mind it is the art of guiding and influencing the schemes and intrigues of political parties, or of cliques or individual politicians. In popular estimation a politician is one primarily devoted to his own advancement in public office, or to the success of a political party, or one addicted or attached to politics as managed by parties; a schemer, an intriguer.

Statesmanship may be defined as the science of government; politics as the science of exigencies. Statesmanship studies the public weal; politics, private advantage. Statesmanship is born of love of country; politics, of meaner parentage. Statesmanship is actuated by pure and lofty purposes; politics, by low and sordid ones. Statesmanship is willing to champion an unpopular cause, if it be right, and is capable of great sacrifice in its behalf; politics joins only in popular acclamations, gives no concern to the merits of the issue and is incapable of sacrifice. Statesmanship exemplifies the power of a great conviction; politics, the cohesiveness of spoils and plunder. Statesmanship directs the State into sane and safe ways, perpetuates its institutions, augments its power, adds to its prestige and fame and gives splendor to its glory; politics leads the State into dangerous and doubtful ways, undermines its institutions, depletes its strength, detracts from its power and prestige, dims its fame and strips it of its splendor.

The statesman is ambitious for his country; the politician for himself. The statesman serves his countrymen, but his countrymen serve the politician. The statesman studies the present in the light of the past, that he may understand and interpret the future to his country's good. The politician knows little of the past, and cares nothing whatever about the future, so long as he is permitted to fatten on the present. Occasion itself is the child of the statesman, but it is the father of the politician. Statesmen are among the State's most valuable assets. Politicians are among its most dangerous liabilities.

Statesmanship and politics in this country are so closely blended as to require keen discernment on the part of the people to distinguish between the art of the politician and the appeal of the statesman. In fact,

statesmanship and politics meet and mingle in the deeds and lives of most public men. The politician is rarely totally lacking in the elements of statesmanship, and the statesman who possesses none of the meanness of politics is yet more rare.

The lives of few public men more forcefully exemplify this fact than does the life of Chief Justice Chase. In his campaign for the senatorship in 1849, for the presidency in 1856 and in 1860, especially in 1864 and in 1868, he played the game of politics much as the politician plays it. In that role he was not himself, at least not his better self; in fact, he was at his worst. The impress of those days, made by his unfortunate campaigns for the great office of the presidency, left something of a shadow upon an otherwise flawless fame.

But Chase at his best was not a politician. He was a statesman; a statesman, too, of constructive power, bold, skillful and sagacious. He possessed great and abiding convictions concerning freedom and the rights of men, and there never was an hour in his life when there was in him enough of the politician to cause him to surrender these convictions, even for the presidency. As to these he never yielded nor compromised, nor did he ever shrink from moral responsibility in his public service. Honesty and indomitable persistence were always his.

He was a statesman when as a young man, living in a pro-slavery community, he turned his back upon his own apparent interests and sacrificed, as he had a right to believe, a brilliant career to champion an unpopular cause and become the defender, in the courts, in the press and upon the stump, of a despised, an enslaved and a persecuted race.

He was a statesman when at the peril of his own personal safety he stood for the freedom of speech and

declared for the freedom of the press. He was a statesman when he saw and announced the fact that slavery and freedom of speech could not continue to exist in the same country and that the enslavement of the black man endangered the freedom of the white man. He was a statesman when he battled against Douglas in the senate of the United States for the freedom of the Territories. He was a statesman when in that debate he declared: "All men are created equal; they are endowed by their Creator with certain inalienable rights. Aggressions upon these rights are crimes."

He was a statesman when amid the disasters of defeat, after the passage of the Kansas-Nebraska bill, he wrote to the despairing friends of freedom this line from Milton:

> "Bate no jot
> Of heart or hope, but still bear up and steer
> Right onward."

He was a statesman when in February, 1861, he declared that the laws of the Union should be enforced at all hazards and against all opposition. He was a statesman when he put into the mouths of the friends of the Union, in the days of doubt and indecision, the battle cry: "Inauguration first, adjustment afterward." He was a statesman when he piloted a confused and bewildered nation through the waters of monetary disaster into the harbor of financial safety. He was a statesman when he gave to his country the basis of the present national banking system. He was a statesman when he foresaw and announced the dangerous power of great corporations through the control of the country's transportation facilities. He was a statesman when as Chief Justice, presiding over an unwilling Senate, he held it against its will to its proper character as a judicial body during the impeachment trial of President Johnson.

He was a statesman when in the days of reconstruction he gave judicial sanction to the theory of an "indissoluble union of indestructible states" and to the reestablishment of national authority throughout the South.

Gentlemen of the Bar, you do well, therefore, when in memory and in appreciation of what he was to each of the three great departments of the government—legislative, executive and judicial; of what he there stood for and of what he there did, you give this portrait to this most august tribunal; and you, sirs, representatives of the great judicial system of which he was a conspicuous part, do well to accept this portrait in memory and in appreciation of those attributes of heart and mind and character that made him great and gave him enduring fame.

APOSTLES OF THE LAW.

An address delivered before the Law Class of the State University, Bloomington, Indiana, June 13, 1905.

Gentlemen of the Law Class of 1905:

You have chosen a profession that has greatly served the peoples of the world for many centuries. From the days of Moses, the first great law-giver, the lawyer has been a potential factor in the world's affairs. Greece and Rome owed as much in the days of their real greatness to their lawyers as they owed to their generals. The history of England is, to a great degree, the chronicle of that which her eminent lawyers wrote and taught. In America the very basis of the government itself was woven of the thought of a lawyer and in the loom of a lawyer's brain. Lawyers have preserved and perpetuated what the soldiers of the Republic won on the field of battle. The armies of Washington won the independence of the colonies—the acknowledgment of their right to be free. But the union of the states was made possible by the patriotic services and the wise and far-seeing ability of lawyers. They, more than any other class of men, molded the thought of the people and shaped the affairs of the new-born Republic. Through their efforts we were given a Constitution resting in parchment and not in tradition; a Constitution definite and certain; a Constitution in which barriers are placed upon the one side and upon the other; in which neither despotism nor anarchy can find an abiding place, and in which

established limitations are laid upon both the governing and the governed.

No man who reads with intelligent care the history of the constitutional period of this nation, can doubt, either who made or who secured the adoption of the Federal Constitution. Lawyers wrote it, and lawyers secured its adoption. The names of James Madison and Alexander Hamilton are linked forever with the Magna Charta of American liberty. Without them it would have been neither written nor adopted. This is especially true as to Hamilton. He, more than any other man, created the public sentiment which called the constitutional convention into existence. The convention once called, he forced New York to elect delegates, that it might be represented there. Himself a member, he delivered a speech of such learning, such force and power as to leave its impress upon all of the after-work of the convention. He wrote his own name and the name of New York to the great document after his colleagues had abandoned the convention and returned to their homes. Upon the adjournment of the convention, he began a series of controversial essays, which did more than anything else that was ever written, to secure the adoption of its work,—a series of papers so clear, so strong, so direct, so replete with learning, and rich in knowledge, as to form the basis of an enduring fame for him who wrote them, and which are to this day the best treatise on the principles of Federal government ever formulated; a treatise which is still cited by bench and bar throughout the country, and by all writers on constitutional law.

He secured New York's assent to the new Constitution, in convention assembled, by sheer force of his learning, his ability, his eloquence, and his logic, and this, too, from a powerful majority ably led, which was bitterly

opposed both to him personally and to the instrument it adopted. In that convention he achieved the unparalleled distinction, when but thirty years of age, of hearing from the lips of the leader of the majority the confession that his will was overcome and his judgment convinced by the masterful argument and merciless logic of his opponent, and this after a conflict of many weeks filled with hot personal contention and acrimonious debate—a victory without parallel in the history of popular assemblages.

It is indeed true that this Constitution, this house of refuge, in which liberty lives and moves and has her being, and in which, under the sanction and protection of written law, she has dwelt for one hundred sixteen years, is the handiwork of the apostles of the law in every section, in ever line and in every syllable.

The Constitution adopted and the government provided for by it organized, a lawyer, John Marshall, sitting as Chief Justice of the Supreme Court of the United States, made of that great instrument, by judicial construction and interpretation, a national charter instead of an instrument of confederation. Through his work it was transformed from a rope of sand, thrown about independent and sovereign nations, into the enduring bond of an indissoluble Union of indestructible States.

Later, it became the privilege of another lawyer, Daniel Webster, through his logic and eloquence, to give the Constitution a place in the hearts of the people as defined and interpreted by Marshall. And together, these two men, Marshall and Webster, gave it a virility that enabled it to survive insurrection and rebellion, and made it stronger than the marching armies or the glittering bayonets of treason.

It was a lawyer that led the nation through the toil and blood and sacrifice of the Civil War and, in the hour

of his country's triumph, gave up his life that the measure might be filled and the atonement made complete.

The impress of lawyers upon public affairs in a free country is immeasurable. Their influence is felt everywhere and in everything. Through the education, the training and mental discipline made necessary by the successful practice of their profession, they become leaders of men. They deal constantly with large affairs and with the rights and liberties of the people. By reason of their learning, their knowledge of men and the springs that move them to action, they mold the thought and shape the affairs of the country more largely than any other class of citizens. They have more to do with the making of the laws of a country and with the writing and solemnization of its treaties than all others, and it is their exclusive province to interpret the laws when made, through the judicial department of the government which they have controlled for more than one hundred years. In every great crisis since the organization of the government, the Federal Supreme Court has borne a large and, almost without exception, an honorable part in determining the issues involved.

The Declaration of Independence, the Proclamation of Emancipation, the Ordinance of 1787, that gave freedom and the means of education to the people of the great Northwest Territory, the Constitution itself, with the amendments thereto, and the judicial decrees that have interpreted it and which have marked the progress and the development of the country, the great legislative acts, the treaties by which we acquired the Louisiana Territory, Alaska, and our island possessions, together with the laws and codes that govern them, have all been either written in the first instance by lawyers or revised by them before they became of binding force.

The lawyers of the nation have made a large part of

the country's history in forum, in legislative assembly, on the bench and on the field of battle, some of which history they have written. They have contributed to the nation's songs, to its music and to its scientific research and discoveries. They have also won renown and enduring fame in other fields of its literature. As already suggested, Hamilton wrote the best literature of his time, and in our own day, a lawyer, Lew Wallace, a citizen of our own State, gave to his countrymen the one masterpiece of his generation, the greatest and most enduring volume of the last half-century.

After painstaking and, we trust, thorough preparation of mind and heart, you, the members of this class, are about to enter upon the practice of the law. Your decision in the choice of a profession is opportune. There is need of you. You enter the forum in the morning of what is destined to be the world's greatest century; at a time when unparalleled opportunity awaits you, if you are but prepared to meet it. If you understand and possess the ability and the will to solve the problems which the world will all too willingly submit to you, your part in affairs is destined to be a most honorable one. We are living today in an epoch-making period, in the midst of a revolution which is going on about us, silently and almost unobserved, because of its very complexity and magnitude. Stupendous economic changes surround us on every hand,—changes out of which will grow questions for your decision, of the most complex, intricate and far-reaching character. Running through these changes, whatever they are, or may be, there are and will be certain fundamental principles of human right and human liberty. These you must be prepared to recognize, to struggle for and to protect.

With infinite pleasure, and with the keenest possible

appreciation of you and your high opportunity, I welcome you this day into the ranks of what I believe to be the greatest of all professions. The high places in life, the seats of the great and the mighty await you, if you are worthy and well qualified. You are about to enter a royal fellowship, a goodly company. Your companions are to be henceforth the builders of the nation, —the friends of the innocent,—the protectors of the weak, and the avengers of the wrong. Great names adorn the roster upon which your names are to be this day written. On the list are the names of nineteen out of the twenty-five presidents of the nation,—John Adams, Thomas Jefferson, James Madison, James Monroe, John Quincy Adams, Andrew Jackson, Martin Van Buren, John Tyler, James K. Polk, Millard Fillmore, Franklin Pierce, James Buchanan, Abraham Lincoln, Rutherford B. Hayes, James A. Garfield, Chester A. Arthur, Grover Cleveland, Benjamin Harrison and William McKinley. There also are the names of Clay, and Webster, and Calhoun; of William Wirt, of Jerry Black, of Mathew Carpenter, and of the two Choates; of Thad. Stevens, of Seward, of Hamilton, of Marshall, and of Fuller; of Ingersoll, of Chase, of Stanton, and of Sumner; of McDonald, of Butler, of Hendricks, and of Voorhees; of Wallace and of Morton.

I have named but a few, an infinitesimal few. There are many times as many as I have named, but in these few are the men,—authors, jurists, orators, soldiers and statesmen,—who, in large measure, have made the fame and glory of State and nation. Into this fellowship I welcome you, in the belief that you will find in it inspiration to do your best in the race of life. These men gave the profession of the law dignity, greatness and honorable fame. They left the "gladsome light of jurisprudence" pure and radiant. If the profession

falls from its high estate, or if that light becomes impure or dim, the fault will be yours and not theirs.

The measure of your responsibility is all the greater because of the opportunity for preparation which has been afforded you. You are "college bred." You have enjoyed a privilege that comes to but fifteen persons out of every ten thousand of the population of the country, —fifteen-hundredths of one per cent; a privilege that is denied the ninety-nine and eighty-five hundredths per cent. of your countrymen. Your chance to reach eminent success and usefulness is eight hundred times greater than that of any one of the ninety-nine and eighty-five hundredths per cent. who have not had your opportunities. Your opportunities have been rare and many, but the law of compensation has increased your responsibilities in the same ratio. You ought to become leaders of the people and of affairs. You ought to be able to put into words what the masses cannot utter, and into deeds, the throng's unwhispered aspirations.

If education and university life has left you bigoted, arrogant, narrow and careless of the rights of others, it has missed its purpose in you. The purpose of the university is to provide you with an enlarged spirit, with multiplied powers, and with wide and catholic views. Its purpose is to supplant the egoistic in you with the altruism that begets service for others, and a charity for the weaknesses and the faults of those less fortunate than yourselves. Increased happiness and an ability to enter with fuller appreciation into the affairs of the world and into the enlarged sphere it offers you, ought to be the heritage you take away with you as heirs-at-law of this institution. Among the assets with which it endows you ought to be perfected manhood, development of soul, higher culture, and keener perceptions. Without these qualities of heart and brain, you

cannot successfully aspire to leadership among a free people. The spirit of caste which puts a man out of touch with the great general public is inimical to success. It is well to feel the public pulse; to go among the people, and to seek the levels where flow and throb the vital currents of human life. The people and the myriad mixture of their affairs, their passions, their hopes, their fears, their prayers, their loves, their hates, their aspirations and their desires, constitute, after all, the greatest of all universities. The doors of that university are open to you, today, and refusal to matriculate will be a foolish and a fatal thing.

Caste and aristocracy should have no temptations for you. I was born a plebeian, and not a patrician, and a plebeian I am to this day. By the accident of birth I came of the common people, but I am of them now of my own free choice. I would not be a patrician. And if I were one, I should make haste to discard my caste, to deny my title, and to become a commoner. I choose to live among the people and to share their destiny; for there the real drama of human life is played. There are its comedies and its tragedies. There the current of life flows broad and deep, and strong and clear. There the hopes, the purposes and the aspirations are, which are making for the betterment and the uplifting of the race. There all one gives is returned to him again, with compound interest, and those who give are none the poorer for having given. There is my university, my only school, and there I am still a student. Much to my regret, I did not have the privilege of a college training. I am of the ninety-nine and eighty-five hundredths per cent. I am not, and can never be, an alumnus of any university, such as you graduate from today, but I can extend to you a hearty welcome into mine. I invite you to be-

come a fellow-student with me in the study of the lessons written each recurring sun upon the pages of the world's affairs. It is a greater college than any you have yet attended, and its lessons more difficult to master than any you have had.

For years you have been

> "Mastering the lawless science of the law,—
> That endless myriad of precedent,
> That wilderness of single instances,
> Through which a few, by wit or fortune led,
> May beat a pathway out to wealth and fame."

From that study and that research you graduate today, but as lawyers you are not finished. You are only begun. You are yet to receive many a hard knock and lose many a rough corner before you are really a marketable commodity. There will be years of waiting, years of patient plodding, before either briefs or fees will greatly multiply. It will be long, indeed, before you will be able to obtain a favorable decision upon a petition for a re-hearing in the court of which the honorable judge who sits here with us is a member. I have tried that feat often myself, and I know how difficult it is. The court does not always decide correctly. That I can prove by about half the lawyers engaged in any case coming before it. But its members think it does, and they have the last guess.

And yet, it may sometimes be your privilege and your duty to point out their error to them when they are wrong; and to do that successfully, you must have an absolute mastery of the question involved, and be able to present the point at issue stripped to the very bone, and to do so with unerring accuracy and faultless logic. Your success there, as elsewhere in the profession, will depend, first, upon your being right in your contention;

and, second, in being able to present your reasons therefor with learning, with precedent, and with clearness.

Honesty,—absolute integrity everywhere and always,—is the first essential to eminence in the profession you have chosen. It is the bed-rock on which alone an enduring structure can be builded. In this connection I commend to you Cowper's lines, half criticism though they are:

> "A lawyer's dealings should be just and fair;
> Honesty shines with great advantage there."

I submit also the testimony of one of the world's great lawyers, Daniel Webster:

"An eminent lawyer cannot be a dishonest man. Tell me a man is dishonest, and I will answer, he is no lawyer. He cannot be, because he is careless and reckless of justice; the law is not in his heart, is not the standard and rule of his conduct."

A lawyer must needs be an honest man; honest in his dealings, honest with his clients, honest with the jury, honest with the court, honest in investigation of both fact and law, honest in his search for the truth, and honest to stand by it when he has discovered it. A verdict or a decision won by deceit, by trickery, or by a technicality, will, in all probability, not stay won. But a case won on its merits by careful, intelligent preparation, can usually be saved. The great lawyer takes care of the fundamentals. He plants himself upon enduring principles and endeavors to bring his case within them. In almost every case the result hinges upon some one or two points of controlling importance. The successful lawyer is quick to discover these, and is constant in his adherence to them. Everything else is subordinated. Every pleading, every act, every word, every argument is made with reference to them, and with the thought of

re-enforcing them. About them the evidence is piled. For them the instructions are written. Upon them the argument is based. Excursions are made into other fields only for materials with which to strengthen them. These once established, the case is won. No one steps aside in the trial of a cause for the lawyer who does not know where he is going, but for him who knows where he is going and how to reach his destination by established principles and honest means, both courts and juries have willing ears.

It is becoming more and more necessary for a lawyer to know his case. He must know the facts in their minutest detail, and must know them as they actually are. He must know the law and know it as it applies to the facts, both as to principle and as to decisions. He ought to see and talk with the witnesses face to face that he may know and understand them on examination before the jury. This, of course, means work, much work; but work is part of the price of eminence in the profession.

As lawyers you will have many opportunities to render valuable public services, sometimes without compensation, but you will find an all-sufficient reward for such services in the welfare and in the elevation of those about you.

The truth is, the world of today has little use or place for the lawyer as characterized by Ben Johnson:

> "So wise, so grave, of so perplexed a tongue,
> And loud, withal, that it would not wag, nor scarce
> Lie still without a fee."

You will sometimes be required to plead the cause of the innocent without compensation, but this you ought to do in a proper case, however indigent or penniless

such an one may be. The innocent and the helpless should find a friend in you always.

You are about to take upon yourselves an obligation, here in the presence of this assemblage, to support the law of the land as written in the constitutions of the State and nation. In the practice of your profession you will have much to do with the respect and esteem in which the law is held by your fellow-citizens. You can do much to make it a thing to be respected, to be loved, to be obeyed; or, you can make it something to be despised and to be disregarded. I trust you have fully decided to become the law's apostles in fact as well as in name. If you have thus decided, there is need of you. There are men in this country who look upon the enforcement of even wholesome and beneficent laws as an abridgment of what they are pleased to call personal liberty. There are others who insist upon the right to decide for themselves what laws are wise and wholesome and ought to be obeyed, and what are unwise and arbitrary and ought to be disregarded. The individuals of each of these classes are prone to complain of the enforcement of the law, and to find fault because they are not exempt from its operation. Here, indeed, is a field for you. In your practice you can do much to avoid the law's delay, and to secure justice speedily and with impartiality. As a leader and molder of thought in your several communities, you can do much to create a public sentiment having for its basis a profound and willing respect for the law as it is written. By this institution, through the commission it gives you, and by the profession of which you are about to become a member, you are made apostles with power to preach this evangel of patriotism and of good citizenship throughout the land, and especially throughout this goodly commonwealth of ours. I beg you not to forget

this truth: Were others not restrained, you could not be free; were you not restrained, others could not be free. Freedom from restraint is not true liberty, but license; and license at the very best, is but the liberty of the jungle,—the liberty of the anarchist,—the liberty of the assassin. Where anarchy is, might alone makes right. There, he takes and holds who can. Where anarchy reigns, slavery; is and no government ever is or can be, save the government of the absolutist, of the despot, who finds himself for the day strong enough to enforce his rule.

True liberty, of necessity, is compelled to find its limitations in the law. This is the liberty our fathers established,—the liberty of civilization,—the liberty of the free. Where it is, slavery never is; justice holds her court and each individual citizen is free because every other citizen is restrained from the invasion of his rights. This must be the rule in a government like ours, of the people and by the people. Here the law is the source of justice; the foundation of liberty. Here all men's rights are defined by the law. Here the law stands between the liberties of all that the liberty of none may be invaded. Here the law lays no restraint upon the freedom of the good; its hand falls upon the bad alone. Here every power the law bestows, either upon the people or upon those who govern them, is circumscribed and limited by the law itself. Here every guard and security essential to the preservation of free institutions is found imbedded in the law of the land, and here the law cannot be long or often departed from without peril to all that is worth saving in State or in nation. Here there must be obedience to the law, so glad and so entire that its restraints shall be unfelt. Here the nation itself is held together by law. It is the bond that binds the States together and keeps the "Many in One" from

falling asunder. Here, the people having the power to make the law and to change or repeal it at will, there is no excuse for its violation.

This is the evangel I would have you preach, the gospel I would have you tell to your countrymen everywhere, until all shall come to respect the law, to recognize its majesty, and to yield prompt and willing obedience to its mandates.

ADDRESS TO BANKERS.

An address of welcome to the members and delegates of the Indiana Bankers' Association on the occasion of the convening of the Ninth Annual Convention of the Association, held in the City of Indianapolis, October 25, 1905.

Mr. President and Gentlemen of the Indiana Bankers' Association:

The privilege accorded to me this morning, of bidding you welcome to this splendid city and of saying a word of congratulation and of felicitation upon the convening of this, the ninth annual convention of your distinguished body, is indeed and in truth a most pleasant one. The welcome I extend to you on behalf of the city is both cordial and sincere. Indianapolis is today something more than the capital of the State; it is its metropolis as well. It is the center of population, of transportation, of manufacturing, of commerce and of the State's political, social and literary affairs, and of its wealth and financial resources. In the name of all these I welcome you. The State is what it is largely because of you, and of the industry, the thrift and the genius of the people of the several communities from whence you come, and whose representatives you are. When you come to this city, you come, in large measure, to your own; when the city receives you, it receives its own; and it is in that sense and with the feeling of pride and kindly interest that springs therefrom that we welcome you. We welcome you not only because of what you have and

of those you represent, but because of what you are, and because of the strength, the poise and balance you give to your several communities, to society, to commerce and to the State.

I congratulate you upon the auspicious circumstances and conditions under which you convene. The evidences of material prosperity are about you everywhere. There seems to be no cloud in the financial sky of State or nation. Conditions have been such in Indiana during the last few years as to multiply financial institutions until today they number almost seven hundred, with an aggregate capital of $20,000,000 and with deposits of more than $200,000,000. And there is fair promise of a material increase of deposits when the products of the year are marketed and turned into money. Increased deposits have brought increased responsibility to you. Their aggregate amount, large and unprecedented as it is, makes the question of how to secure them one of widespread and vital interest to you and to the people to whom they belong. That some improved method of safeguarding these funds must be devised, is made evident by the numerous bank failures recently occuring both within and without the State. None of these failures has been due to stress of general financial conditions. They have been occasioned, without exception, by the dishonesty of some trusted bank official or by the careless, negligent and inefficient supervision of those charged with that high duty. Outside the State, instances are many; among them Milwaukee, Peoria and Allegheny. Nor are they wanting inside the State; witness Ladoga, Terre Haute and Hagerstown.

I am persuaded that the primary cause of these failures cannot be reached or removed by legislative enactment. They were due primarily to lack of moral fiber and to the individual dishonesty of the men having in charge

the management of the funds of the failing institutions. Greed, avarice and lust of gain may be and ought to be inhibited by statute, but they cannot be eradicated thereby from the hearts and lives of men.

One of the missions of this convention ought to be the creation of stronger moral fiber and of a higher appreciation of public obligation in the hearts and lives of its members. You hold large and sacred trusts, in which are wrapped up the welfare, if not the lives, of the people whose trustees you are. The $200,000,000 fund entrusted to you may be an instrument of most potential power for either good or evil according to the use you make of it. Money wisely used is one of the greatest of blessings. Unwisely used, it brings sorrow, misery, degradation and shame. Whether the wealth that lies in your vaults shall be a blessing or a curse, whether it shall promote civic purity or destroy it, will depend upon the use that shall be made of it.

There is no more serious problem before the American people today than that presented by the widespread misuse of money. Its misuses are multiple. One of its misuses is the corrupt use of it to elect unfit men or men of any kind to office; another is its corrupt use to secure legislation; another to shield law-breakers from just punishment; another is its use to maintain extravagant and luxurious living. The end of all these is irremediable loss to the innocent and shame and misery to the guilty. Extravagant and luxurious living begets a greed and avarice which manifests itself in the methods and practices of such men as Dougherty, McCurdy and McCall. Neither unbridled license in the methods pursued in the acquirement of wealth, nor its misuse when acquired, however it may have been gotten, can be long continued without national enervation, corruption of the vital civic currents of society and the decadence of free institutions.

Pope aptly illustrates the use and misuse of gold in the lines:

> "Trade it may help, society extend,
> But lures the pirate and corrupts the friend;
> It raises armies in the nation's aid,
> But bribes a Senate,—and the land's betrayed."

Of it another wise and many sided man has written:

> "This yellow slave
> Will knit and break religions; bless the accursed;
> Make the hoar leprosy ador'd; place thieves
> And give them title, knee and approbation."

It is of the highest importance that we as a people "know the province of it, and confine it there, and even spurn it back when it wishes to get further."

I know of no class of men who can do more to correct and minimize the misuse of money than the bankers of the country, if they do themselves but possess a proper appreciation of its use and live up to their high opportunities.

Primarily, the remedy for bank failures such as I have described and such as are occurring these days, lies along the lines I have named. But, incidentally, something can be done by law. Legislative enactments will not of themselves make men honest, but they may be of such a character as to be helpful in that regard. Gladstone put the case well when he said, "The object of the law is to make it as easy for good men to do right and as difficult for bad men to do wrong as possible." What we need is legislation that will make it easier for a good man to do right as the custodian of trust funds, and more difficult for a bad man to do wrong as such custodian. To this end exacting and rigid supervision and examination of financial institutions, national, State and private, are essential. In my judgment you bankers err

most grievously, not only from the standpoint of the depositor and the public welfare, but from your own, when you oppose reasonable and effective legislation along these lines.

There is another proposition looking to the same end,—the minimizing of loss to depositors,—which is worthy of your most careful and serious consideration. I refer to the establishment of a guaranty bank for the banks of this State, to be located in this city, and to be given sufficient capital to be invested in United States bonds to give it solidity and strength. It is thought that a fund sufficient to guarantee the payment of all deposits in the banks affiliated with such an institution could be created from a slight assessment amounting only to a small fractional per cent. of the deposits in such banks, and that a reasonable dividend could be paid upon the stock of such guaranty bank.

Security of deposits is absolutely essential to stable commercial and industrial conditions. Months and sometimes years are required for a community to recover from the effects of a single bank failure. The losses covered by such failures are not confined to deposits alone. These, of course, are usually swept away. But there is in addition a betrayal of trust and an abuse of confidence that does more to injure the business interests of the community and of society in general than any direct money loss can do. If, in your wisdom, you can devise some method by which the payment of the money of your depositors can be guaranteed so that there may be no such thing as loss to a depositor, or if you can do no more than minimize such losses, you will have earned the gratitude of all the people of the State.

Another striking example of the corrupting and dangerous misuse of money is the present method of handling the public funds, township, city, county and State, by

the officials having the custody thereof. Under the system in vogue they are wont to use and handle it as if it were their own. The presence of public moneys, which will not be immediately needed on public account begets a desire on the part of their custodians to make use of them for private gain. In many cases salaries are small and sometimes inadequate. The official finds himself unable to live, upon the salary fixed by law, as he desires. The public money is in his vaults. It will not be immediately needed. It is subject to his control. He yields to temptation and makes use of it. It may be by depositing it in banks,—sometimes in banks of doubtful solvency,—for the interest that will accrue; or by loaning it to personal friends, or, as we have recently seen, by investing it in doubtful securities, and finally by making actual personal use of it.

The interest accruing he puts into his own pocket, and, by a process of thinking that is of itself inaccurate and dishonest, persuades himself that it belongs to him. This is sometimes done by men who would be insulted if the suggestion were made that they steal the public funds. Yet they look upon the interest as their own, notwithstanding the fact that it accrued from a fund in which they had no interest. The nearer a bank is to insolvency the higher rate it offers for money and the greater the temptation to the custodian of public funds to place them on deposit there. But little more than a year ago a private bank failed in this State in which public funds were deposited at the rate of six per cent,—a rate so high as to constitute in itself an advertisement of insolvency.

The practice to which I have adverted leads gradually but certainly to a lower and lower appreciation of public obligation. Its whole tendency is bad. It ends inevitably in defalcation and disgrace, and leads sometimes to

the prison door. The system is father, too, of a long line of other evils.

When a bank having on deposit public funds fails, the officer who is responsible for the safe keeping of the funds frequently finds himself unable to make good the loss to the public. True his bond is responsible. But, if the bond be a personal one, it often results in great hardship to the sureties. Where the officer has succeeded himself, there are frequently two bonds with two sets of sureties. Differences as to the liability under the respective bonds arise. Litigation follows. And if, as is many times the case, the bondsmen are men of affairs and great personal influence, the litigation is compromised at a less amount than is due the public.

Another method of obtaining relief from bond obligations is the introduction of measures in the General Assembly for the relief of the officer chargeable with the funds so lost, or of his bondsmen. Once before the General Assembly, its passage, because of legislative courtesy, and because it is said that none but the constituents of the member introducing it are affected by it, is practically assured. In the late General Assembly more than thirty such bills were introduced, involving, in the aggregate, something like $260,000. Five bills of this character, relieving fifteen public officers, passed both houses, and it is fair to presume that all the others would have done so but for the executive veto.

All this is the result of a bad system. The law as it now is requires public moneys to be kept in the several public treasuries, but it is ignored almost universally. It is all but impossible to enforce the law in this regard. Even if the officers in charge of such funds were not tempted to loan them for personal and sordid motives, the responsibility and danger of keeping them in the

public vaults would impel their custodians to violate the law for the sake of safety.

The necessities of the financial and commercial interests of the State preclude the withdrawal from the arteries of trade of such a volume of money as that in the hands of public officials. The average amount of such funds so held by township, town, city, school, county and State custodians is $13,000,000, and at certain seasons of the year, to-wit: in November and May, it reaches probably $35,000,000. The withdrawal of such a volume of money from circulation and the locking of it up in the several treasuries to be held for an indefinite time and until paid out for public purposes would result in such commercial and financial embarrassment as to preclude its serious consideration.

For these reasons the law as it now is, is ignored. This of itself is a dangerous condition. Disregard of one law begets disregard for and contempt of all law, and ends in many far-reaching evils, some of which we are daily harvesting.

I am conscious that the members of this association are men of affairs, of weight and of influence in their several communities, and, being keenly alive to the weaknesses and dangers of the present system of keeping public funds, I appeal to you in the hope that you will be willing to make quick and efficient response by aiding in securing a new and better system. You are bankers, but before you were bankers you were citizens of the State. You are still citizens of the State. Your interests and the interests of the institutions you represent are so intricately interwoven with the interests of the State as a whole as to make the interests of the State your interests. This matter is very largely your matter. The evils, to some extent, are your evils. You can

greatly aid in their removal. For these reasons I make this appeal to you direct.

I believe the law should be so changed as to create a finance board for the State, which shall be charged with the responsibility of selecting public depositories among the banks of the city of Indianapolis for the State funds, and that the several officers of State receiving public funds should make daily settlements with the state treasurer and pay the funds received by them into the State treasury, and that the State treasurer should be required to deposit the public funds in the depositories designated by such finance board. I believe, too, that under such conditions at least two per cent interest could be obtained upon these funds, and that such interest should be covered into the treasury and held as sacred as the principal upon which it accrued. The banks designated as State depositaries should be required to secure the moneys so deposited with them by securities possessing stable and fixed value, to be submitted and approved by the finance board and to be held as a pledge for the payment of such funds, or by a sufficient indemnity bond to be approved by such board. There are times when the treasurer of State has in his custody $1,500,000. This fund should not be deposited in a single depository; a limitation should be placed upon the amount placed in any one bank. By the Massachusetts law forty per cent of the capital stock of the bank is made the maximum amount that any one such depository may receive. The liability of the officer depositing the fund should end with its deposit, and be thereafter devolved upon the bank receiving it. The same principle should be applied to all county officials handling public funds, and the boards of commissioners of the several counties should be charged with the duties that devolve upon the State finance board. And the

principle could without great difficulty be extended to city, town, school and township funds.

As before suggested, the average aggregate amount of public funds in the hands of the several custodians of such funds is $13,000,000. This is a vast sum. If the several public corporations to which it belongs could receive upon this sum when deposited a rate of interest no more than two per cent, it would yield them an annual aggregate income of $260,000. Under present conditions this amount or more goes annually into the hands of the officers responsible under the law for its keeping. Every dollar of it rightfully belongs to the public. It may be and probably is true that if the perquisite of interest upon public funds were taken away from officials having their custody, their salaries would be inadequate. In some instances I am sure that is true. But that could be remedied by a law fixing the salaries of such official at a sum that would be fair and just compensation for services rendered.

The amount of money received in the way of interest or otherwise, because of the use of public funds as I have described, is sufficient to pay the salaries of the entire judiciary of the State; it is $50,000 more than enough to pay the salaries of the entire administrative department of the State, including the salaries of clerks and stenographers in such offices; it is $50,000 more than enough to maintain the State Reformatory with 1,039 inmates, and the State Prison with its 886 inmates, and within $60,000 of enough to maintain the entire penal and correctional institutions of the State. It is equal to one-sixth of the total maintenance cost of the entire institutional population of the state.

From an economic standpoint alone, a change in the system along the lines I have indicated is more than justified. Indeed it is passing strange that a people so

keenly alive to business methods and business principles and to economic conditions as the people of the State of Indiana are, should continue so long a system so weak, so dangerous and so expensive as the present one.

Economic reasons, while sufficient to justify abundantly a change in the system, are, however, the least important reasons for such change. There are moral and civic reasons for the change, of such potential moment as to challenge the thoughtful consideration of every patriotic citizen of the state.

Recent disclosures in this State and elsewhere have made painfully apparent the need of a new system. An efficient way to prevent graft and peculation is to remove the opportunity for graft and peculation. The evil influence of the misuse of public funds, the blighting effects of defalcation, of embezzlement and of kindred crimes; the loss of confidence on the part of the people in their public officers which necessarily results,—all constitute cogent and convincing reasons why a change should be made.

The contests that spring up in some communities between banking institutions during primary and election campaigns for the nomination and election of the custodians of public funds, are demoralizing to the citizenship of such communities to the verge of endurance. They are often ruinous to the candidates, both the defeated and the successful, and are sometimes injurious to the banks themselves.

In this county the nomination and election of the county treasurer usually involves the question as to which bank shall have control of the public funds that are to come into his hands. This means a contest in which the prize is the control of $1,000,000 for a term of two years, that amount being the average amount usually in the hands of the treasurer of Marion county.

These contests have done more to debauch the citizenship and corrupt the electors in this county than any other phase of civic life. They are so costly as to be absolutely ruinous to the defeated candidate, and as to require more than the successful candidate's salary for the term of two years to meet the expense incurred. Such a condition is intolerable. It is a living, continuing danger to the public welfare. It ought to end. All citizens who have at heart the welfare of the county and the State ought to be willing to help end it.

I believe the plan I have suggested will do much to improve this condition. I therefore submit it to you and bespeak for it your candid consideration. And if, after you have given it such consideration, it appears to you to be safe and wise, I ask your aid and co-operation in securing its enactment into law by the next General Assembly.

I submit it, too, at the same time, to the great business and commercial interests of the State, and to the thousands of thoughtful men in Indiana, and appeal to them for support in its behalf.

I am anxious only for the principle involved, and I am entirely willing to be advised and to receive suggestions as to its details.

In presenting it to you I do so wholly from disinterested motives, actuated alone by what I believe to be a public necessity. I have not meant to reflect upon the integrity of public officials, but I have meant to lay bare the weaknesses and the evils of the present system, believing that if a better system can be substituted for it, it will save many good men in the future from peculation, embezzlement and defalcation, and do much to bring about a better condition of civic affairs.

AN ADDRESS

Delivered at Republican Lovefeast, Indianapolis, Ind., December 28, 1905.

For almost half a century the Republican party has been to the American people the most efficient means within their reach through which to express their convictions upon political questions, or to achieve results in governmental affairs. They have used it as an instrument to accomplish great things in behalf of free institutions, in the development of the resources and the commerce of the country, and in the upbuilding of its citizenship. Through it their ideals have been realized and their hopes fulfilled. Its platforms have expressed their thought more nearly than the utterances of any other political party, and its deeds have more nearly squared themselves with their purposes and their aspirations.

This much may be fairly said, and in the saying of it, and in the knowledge of its truthfulness when said, we may justly find cause for pride, for gratification and for congratulation. It may even be said, that what it has been in the past, is an earnest of what it is to be in the future. But we live in a progressive age. History is being rapidly written. Conception of official obligation and of civic duty is constantly changing for the better. The ideals of yesterday are too low for the ideals of today.

That the Republican party has done well in the past is not enough. It must do well in the present.

> "New occasions teach new duties; Time makes
> ancient good uncouth;
> They must upward still, and onward, who would
> keep abreast of Truth."

The fact that our fathers did well in the past, will be no defense for our failure now. Today, this hour, is being presented to us a supreme test of our right to continue to administer the government of the State and of the nation. By the results of that test we will stand or fall. By them we will deserve to stand or fall, according as they shall be. If we fail, we may not plead the glories of the past in extenuation. The greatness of other days will but emphasize the weakness of today and augment the shame of our failure. We have no right to expect a further grant of power from the people, unless we use our present power for the welfare of the people and for their welfare now.

During the last few years the times themselves seem to have been somewhat out of joint, and to have bred a desire for speculation, for plunder and for graft; not in public life and in official place alone, but in the professions and in the business of the country as well. Industrial enterprises, financial institutions and the great insurance companies of the country, all have felt the ravages of the disease and have suffered from its blight. It has been and is confined to no party and to no section of the country.

Under such circumstances it is not surprising that it has affected here and there representatives of the Republican party. Being the dominant party, and quite generally in power throughout the country, it would have been passing strange, indeed, had it entirely escaped the contagion. That some of the men trusted by us and who hold our commissions have sinned is not alarming, unless we ourselves, knowing their sins, continue to be contented with them. There is no hope for a corrupt and a contented party, or a corrupt and contented people; but there is hope for either a corrupt party or a corrupt people, when such party or such people

become dissatisfied with wrong doing. Dissatisfaction with sin is the beginning of repentance, and repentance is the beginning of reformation.

That some of the representatives of our party should have become inoculated with the virus which afflicts the times will not forfeit our right to administer the government, either of the state or the nation, if we do but possess the strength, the moral fiber and the courage to dispossess them of the commissions they have dishonored. The spectacle of a party beset by faithless servants, is neither a new nor an unusual spectacle. But the spectacle of a party possessing both the courage and the ability to purge itself of faithless servants and to correct the wrongs they have done the public, is both new and unusual. That the Republican party has done and is doing, both in the nation and in the State. If it succeeds and completes the task, it will have earned the public gratitude and a continuance of the public confidence, and will have given fresh and cogent evidence of its right to govern.

The time was when a man could be a rascal in public office, if he were only "our rascal." Being "our rascal," his errors were concealed, his crimes kept secret, or, if known, condoned; but that was the time of Gorman and of Quay. Happily for the country a better day has dawned, and I hope the time has wholly passed when the Republican party will neither conceal or condone the wrongful acts of its own representatives. If a man betrays his trust, let him that moment cease to be ours, cease to stand for us, and let us cease to stand for him.

In this regard we are being challenged as never before in the history of the party. The challenge comes to us from the people themselves, and their challenge must always be met. There must be no turning back; there must be no halting; there must be no wavering. It may

be that crime and the betrayal of public trust have not increased or multiplied as greatly as we are prone to think. I think, perhaps, that recent exposures are due in part to an awakened conscience, to new civic ideals, and to a new and higher conception of public duty and obligation. If I am correct in this, and the Republican party, either of the State or of the nation, desires a continuance of its commission to administer the government, it must present to the people now, as in the past, the most effective means by which they may accomplish their purpose and realize their aspirations. Anything short of this means abdication by us. The issue is sharply drawn. It is upon us. We cannot escape it. You are the representatives of the Republican party of Indiana. It is your party. You are the jury. It is for you to decide.

MORAL YEARNINGS AND RURAL COMMUNITIES.

From an address delivered at the Chautauqua Assembly at Champaign, Ill., August 20, 1906, in answer to an address of Mr. Jerome, in which he insisted upon two codes of laws touching public morals, one strict enough to satisfy the moral yearnings of rural communities, and the other liberal enough to satisfy the desire for license on the part of city populations.

If the object of District Attorney Jerome was notoriety only, his western speech-making tour was a success. That he obtained, wide-spread and abundant. But if his purpose was to teach, to instruct, or to serve the people, his trip was a failure. His ideals were too low and his teachings too impracticable, too unwise and too dangerous to be helpful. His message was well calculated to do harm. Fortunately the time was inopportune for the preaching of his doctrine, and the harm he did was therefore minimized.

The Middle West is in the midst of a great moral and civic revival which is touching and stirring the public conscience as it has rarely been touched or stirred before. The people,—now as always, the well and source of power,—are coming more and more to see and understand that honest administration of public affairs, enforcement of the laws which they themselves have enacted, and simple, straight-forward ways, are essential to their peace, their prosperity and their happiness. They have rediscovered, as it were, the fact that obedience to the law is the first duty of every citizen and the foundation of the liberty they have inherited, and that clean habits, moral fiber and sturdiness of purpose are essential elements in the character and life of every man to whom the administration of public affairs is confided.

Something of what Mr. Jerome was pleased to call "the moral yearnings of rural communities" has taken hold of men and women throughout the great States of the Mississippi Valley, whether their abode be in the country or in the city. And that something, whatever it is and wherever it appears, is both wholesome and beneficial. It strengthens, uplifts and ennobles whomever it touches, in whatever grade of society he belongs. It is beginning to give direction to the thoughts and deeds of many people.

In truth, rural life and its moral yearnings contributes so much each day to the welfare of the country in the way of increase of property and of wealth, of stamina of character, of health, of physical, moral and mental vigor, and of individual happiness that it cannot be made the subject of a successful sneer even by Mr. Jerome.

It contains the salt that saves the leaven of American citizenship. It is the ballast that keeps the ship of State righted and afloat. It is the "rock in a weary land." It is the buttress and the sure defense of the institutions founded by the fathers.

Life in rural communities,—country, village or town, —is, as a rule, sane and natural. Temptations are fewer and less potent than in the city. Field, river, hill and valley; free air and unobstructed space; the phenomena of sunrise and sunset; the associations of the day, with its arch of blue, with its shadow and its sunshine and the majesty of its cloud and storm; the solitudes of the night, with its vaulted sky, sprinkled and jeweled with distant worlds and stars afar; the mysteries of life as exemplified in bird and beast and flower and leaf and tree, and the appeals of nature everywhere,—all combine to teach simplicity of life, to develop character, to beget reverence for Him who made the universe and

called forth the worlds that are in it, and are conducive to the development of physical, mental and mora fiber. Somehow God is nearer in the country thanin the city. His nearness makes it easy for men to hear and obey. The men and women who are born and reared amid such environment are wont to have moral yearnings and it is well for the city that they are. There is not a city in the land which does not owe more than it can ever pay to the men and women who come to it from the country. These men and women come possessed of moral yearnings, of desire to serve, and with courage to achieve. They replenish daily the city's depleted stream of life. They restore the wasted energies of its population, give strength, virility and moral fiber to its citizenship, and save it from the ruin of its misrule, its sins and its dissipations. But for them its business, professional and social life, would deteriorate and die of its own impoverishment. The problem of the age in this country is not the government of rural communities, but the government of the cities. The purchasable electorate, than which there is no greater peril to free institutions, is not found in the rural communities, but it is found, in the main, in the shiftless, idle and criminal population of the cities. The "wider-open" the city is, the greater are the shiftless, idle and criminal classes; and the greater this population is, the greater is the peril to free institutions.

And yet we are told by Mr. Jerome that there ought to be two codes of laws touching public morals, one code strict enough to satisfy the moral yearnings of rural communities, and another liberal enough to satisfy the desire for license on the part of city populations. I cannot agree with him. If restraints upon the freedom of individual action are needed in one place more than in another, it is in the cities and not in the country.

Where men congregate or dwell in great numbers, as in the cities, individual will and choice must of necessity be restricted in many ways for the good of the population as a collective body. Speed of railway trains, of electric cars, of motors and of vehicles of every kind must be limited without regard to the will of those who operate them, in order that the limbs and lives of the many may be preserved. Matters relating to sanitation make other limitations upon the will of the individual essential for the protection of the whole. Fire limits must be established within which the individual may not build of combustible material lest the property of all be imperiled. The right to store explosives cannot be left to individual caprice because of the jeopardy that would attach to the lives of all. These are only a few of the many instances in which individual will and freedom of action find limitations necessarily fixed by the law,—limitations, the necessity of which arises from and is incident to increased and multiplied populations.

In the cities limitations upon individual choice touching matters which relate to public morals are as essential as in the matters just named. Where population is congested and includes every grade and stratum of society from the lowest to the highest, temptation is multiplied many times and the necessity of restraining the individual will becomes imperative lest the moral life of the whole city be contaminated. The enforcement of restrictions along lines touching public morals is more difficult in the cities than in rural communities. Men become careless and indifferent to abuses and excesses—abuses and excesses, too, which are as fatal to the peace and welfare of the community as a pestilence. Pope understood this when he wrote:

> "Vice is a monster of so frightful mien,
> As to be hated needs but to be seen;

> But seen too oft, familiar with her face,
> We first endure, then pity, then embrace."

But the necessity of the enforcement of such restrictions, however, is none the less imperative because of the increased difficulty attending their enforcement. In every great city there are men who make it their business to make money out of immoral practices, and who, for sordid reasons alone, desire either such an interpretation of existing laws or such laxity of their administration and enforcement as will leave them free and untrammeled to pursue their unholy callings. I do not believe or charge that Mr. Jerome is knowingly the representative of these men, but I do believe and say that every one of them is a believer in the doctrine he preached, and that every one of them applauded his utterance when he declared for two codes of laws relating to public morals, —one for the country and one for the city; one made to satisfy the moral longings of rural communities and another to meet the desire for license of the so-called liberal element of the great cities.

The doctrine embodied in his statement is a dangerous and pernicious doctrine. That immoral practices are more dangerous in city than in country is a truth too self-evident to need argument. They reach and contaminate more people. Their evil influences affect the weakest spot in our body politic, and their attack is directed against the most vulnerable point in the fabric of American government.

The "thou shalt nots" of the law are even more essential in the cities than in rural communities, and they must continue to apply to them with at least equal force and vigor. Sin is sin wherever committed. Dissipation is dissipation; debauchery is debauchery; gambling is gambling; adultery is adultery; embezzlement is embezzlement; bribery is bribery; theft is theft; arson is

arson, and murder is murder, whether committed in the city or in the country. The condemnation of the law must continue to be upon them every one and everywhere, and its hand must continue to fall with impartial vigor upon every one who commits any of them, wherever he resides and whatever may be his environment.

REMARKS AT THE REPUBLICAN STATE CONVENTION APRIL 11, 1906.

Two years ago, in this hall, I received from your hands a nomination which was subsequently ratified by the people at the polls, and under which I have administered the office of Chief Executive of the State for the last fifteen months. At that time I said to you that I accepted the nomination as a sacred trust confided to me by a generous and a too partial people, and made you this pledge:

"It shall be my ambition, and my only one, to justify your partiality by such an administration of the State's affairs, as shall appeal to the judgment of all good people without regard to their party affiliation."

That pledge I have tried and am still trying to keep. But little over one-fourth of the term, as defined by the constitution, has expired. It is, therefore, too early to pronounce final judgment upon the administration, or even upon the work it has thus far done. It requires more than fifteen months' time to formulate and push to completion, policies of State. The hour of final judgment may justly come only when these policies have ripened into results, and their fruits have been garnered. Then, and not till then, can effects be measured, or net balances figured. Until that time comes, you may only judge the administration by the character and the tendency of its acts, or the direction it is traveling. These tests may be constantly applied, and opin-

ions based upon them, though not final or conclusive, are valuable. Therefore, I do not now ask or desire final judgment. There is too much yet to be done, and the road as yet stretches away too far in the distance for that. I only ask that your present opinion of the administration be based upon the character of its acts, its tendencies, and the direction it is going. That much I have a right to ask of you, not merely for myself,but for the party and for the State. The judgment you now render, while not final, will affect for years to come, the party, the State, and the welfare of the people.

With this thought in view, I beg to submit for your consideration, in the briefest possible manner, something of what has been done, of what is being done, and of what we hope yet to do.

The financial interests of the State have been conserved, and its revenue collected and paid into its treasury without loss. Four hundred and seven thousand dollars have been paid on the State debt, and the foreign bond debt of the State has been reduced to $800,000, none of which is payable until 1910, or due until 1915.

The needs of the State in matters relating to its penal and benevolent institutions are being met and provided for by the improvement of existing institutions, and by the location, establishment and construction of new ones, at an aggregate expense when completed of more than $3,000,000. These improvements are necessary to the proper housing and care of those dependent upon the State. Every dollar of this great sum will be met and paid without the increase of the State tax levy by a single mill for any of these purposes. The total State tax levy has been increased six mills, but this increase is due solely to an increase in the common school tuition tax, and not for the purpose of aiding in the improvement of present institutions or the construction of new

ones. When these institutions are completed, the State will be able to meet all proper demands for the care of its dependent and criminal classes.

And all this can and will be done not only without increasing the total State tax levy, but without impairing our ability to meet and pay the $800,000 of foreign debt the moment our option to pay accrues and five years before the bonds mature. Within one year after the close of the present administration, the State will have no foreign debt, and, in fact, no debt of any kind other than its debt to itself as represented by Purdue University and the State University bonds, which cannot be paid.

Appreciating the rights and dignity of free labor, and its inestimable value to society and to the State, we have abolished the contract labor system so long in vogue in the State Reformatory, and have substituted trade schools therefor. From the experience already gained, we believe these schools will serve three useful purposes. They will bring to the State an increased revenue, give employment to the young men confined in the Reformatory, and better equip them to meet successfully the conditions of life that await them upon their discharge. Having in view a like purpose when the prison labor contracts expire at the State Prison, we have established a binder twine plant there, which will give employment to many men without any competition whatever with free labor in this State and which will put a good quality of binder twine into the hands of the farmers of Indiana at a lower cost than they have ever known.

A State Railway Commission law has been enacted and under it a commission has been appointed. The enactment of this law was a new departure in Indiana, and the law, to some extent, is an experiment, but the work of the commission has already justified its creation

by the service it has rendered the people through the adjustment of differences between shipper and carrier, and the correction of a number of abuses affecting railway transportation. The law is somewhat imperfect as it now exists, but its enactment was an important step in the right direction, out of which much good is yet to come. When its defects are disclosed by the test of use, application and experience, they can and will be corrected by additional legislation.

The penal and benevolent institutions of the State have been the subject of the administration's most zealous care and attention. They have been kept, without exception, far from the field of party politics, and there they shall remain. Their affairs are being administered for the benefit of the helpless and the unfortunate children of the State who inhabit them, and for theirs alone, and at a less cost for maintenance than for the year before. It can be said to the credit and honor of the party organization of the State that it has never, at any time, sought to put its hands upon one of these institutions; on the contrary it has stood for the closing of their doors to the spoilsman as zealously and unflinchingly as the administration itself has stood. This is an important fact. It registers a high mark in party ideals, and demonstrates the lofty purpose of those who have had charge of the party's affairs. It is indeed a far cry from this high ground back to the day when every position within these institutions, from superintendent to laborer, was held by the management of the successful party at the polls as the just fruit of party victory, to be distributed by it to the faithful, as of right.

At almost every session of the General Assembly for years past, laws have been enacted refunding to public officers, township and county, public moneys lost by

them through the failure of banking institutions in which they had deposited such funds. Every such law was against sound public policy. It was an appropriation of public revenues to private purposes and was therefore unconstitutional and void, and yet the practice had gone on, with only an occasional interruption, until it had ripened into an established custom.

During the late session of the General Assembly such legislation was stopped in every instance by executive veto, to which the General Assembly loyally gave its assent. In this way a precedent has been established which will be of great public benefit and which I hope will stand. Indeed, I venture the prophecy that a successful effort to enact this class of legislation will not occur again in Indiana for years to come.

The Republican party has been and is responsive to the demand of the people for the regulation and control of the sale at retail of intoxicating liquors. In answer to public sentiment it gave the people of the State the Nicholson law, and at the late session of the General Assembly made further and effective response by the enactment of the Moore amendment to that law. These two acts have been of incalculable benefit to the people and no political party will dare openly to advocate their repeal in the approaching campaign.

Liberty is the foundation of American institutions,—liberty, mark you, not license,—liberty, limited by law. Our fathers brought with them when they sought and found a habitation in the wilderness on this side of the sea a respect for and a willingness to obey the law, out of which grew this Republic, with its present-day power and glory and its leadership among the nations.

Gathered in the cabin of the Mayflower, ere they had set foot upon the soil of this new world, they pledged themselves:

"in the presence of God and one another" *to frame and obey such laws as they might need.*

Something of that pledge found its way centuries afterward into the Constitution of Indiana, and to it solemn assent was given by each of us when we assumed the privilege of our free citizenship. From it we cannot be absolved. It is our privilege to make the law, and by the same token,—the Constitution of the State,—it is our duty to obey the law when we have made it.

That I believe; and for that this administration has stood from the first hour of its existence; for that it stands now; and for that it will continue to stand until it shall end. And the political party that is unwilling to stand for that is not safe to entrust with the administration of government in a free State. If there is such a party in Indiana, let it be some other party than ours. Let it not be the party of Abraham Lincoln and of McKinley. And if there is such a party, and it will but have the courage of its conviction and write in its platform that it is opposed to the fair and the impartial enforcement of the law, I pledge you here and now,in the name of the conscience and the manhood of the voters of Indiana, that it will not be given the opportunity in this year of our Lord to administer government in this goodly State.

In this connection, I beg of you who have been somewhat prone to criticize the acts of the administration in this regard to remember that no legitimate business has been interfered with; that no man's legal rights have been invaded or abridged. All that was lawful every man has been free to do and in the doing of it he has been protected by the law. Property has become safer, financial institutions sounder and life more sacred throughout the State because of the enforcement of the law. The law has been more gener-

ally observed and respected and a great moral uplift has come to our people. It may well be that this moral uplift would have come anyhow, but this much at least is true,—the administration has not retarded its coming, and by measuring up to its level it may prolong its stay and make its effect more lasting and enduring.

If there are any among you who doubt either the wisdom or the righteousness of the law enforcement policy of the administration, I ask you in all sincerity and in all kindliness to go back to your own firesides and in the presence of your wives and children re-examine the premises upon which that doubt rests. I have learned from experience that an American home—aye! an Indiana home, if you please—is a good place in which to think out one's duty, either private or public. There the atmosphere is clearer and purer and the path of duty more easily found. It may be that upon re-examination of the premises in that environment you will find your doubt ill-founded. If, however, it so be that your doubt shall still remain, I ask you to submit the whole question to your wives and your little ones, and I will willingly abide their answer. You, sir, may doubt, but they'll not fail me. They know their home is safer and happier because of the enforcement of the law and the increased respect in which it is held, and the call to a higher life that has thereby come to you, and they'll not fail me.

The fiscal affairs of the State have grown with the increase of population and the accumulation of wealth until their volume can be told only in millions. During the last year the gross receipts of the State treasury were $9,260,827.07; the gross disbursements $9,127,-868.36; an aggregate of receipts and expenditures of $18,388,695.43. Few, if any, private business or finan-

cial concerns in the State equal this in volume of business done or money handled. Taxes and fees and miscellaneous moneys were collected from many sources and by many officials, and all have in the main been honestly collected, accurately accounted for and faithfully disbursed. In two and one-half years the records in the Auditor's office and in the Treasurer's office show a volume of more than twenty-one millions of dollars of official business in these two offices alone, with a discrepancy between the books of the two offices of but four cents and aggregate overdrafts of but fifty cents. These facts are conclusive evidence of the faithfulness and care of the men who have kept the books, transacted the business and disbursed the money incident to the administration of such offices.

There are and have always been many honest men in public office in Indiana, rendering faithful and conscientious service to the State. But there has grown up a system of handling public funds in the custody of public officials for the benefit of the official rather than the benefit of the public. This system is wrong in principle and in many instances it has been ruinous in practice. Public moneys belong to the public. Interests or profits accruing thereon belong to the public as sacredly as the principal belongs to it. There is now and there has been for years a lack of check, of supervision and of examination in the public business of the State, without precedent in private business of like magnitude and without justification or reasonable excuse. The lack of these has made it possible for some men holding high office to abuse their trust, to sequester fees belonging to the public and to appropriate them to their own use. The present administration has uncovered the system, exposed its weaknesses and laid bare its corrupting and ruinous effects. One hundred sixty-four thousand

dollars have been recovered and returned to the treasury that, on the 14th day of last September, were unlawfully being withheld, and most of which had been misappropriated and embezzled.

The law requires an official making a demand for services rendered to point to some statute which clearly authorizes both the service and the compensation claimed. Under the system in vogue this just and wholesome rule of law has been reversed. Every doubt has been solved against the State and in favor of the official, and in some instances fees have been sequestered and appropriated to private use in violation of the positive letter of the statute. Both the system and the corrupting practices under it have been bi-partisan from the beginning. Change of administration from one party to the other did not interrupt either the system or its abuses. Honest men of either party were not harmed, but weak men of both parties fell before the temptations to private gain, and dishonest ones reveled in the opportunities offered for peculation and plunder. The effect has been as bi-partisan as the system. Thousands of dollars of public revenue have gone into the pockets of officials, Republican and Democratic, and the people have paid without regard to party affiliation. Some of these misappropriations of the public revenues were permitted to sleep for years without exposure. It remained for the present administration to bring the facts to light and reveal the truth to the public. This it has done without fear, favor or partiality. None has been spared. The money of the State has looked alike to me in whosesoever pocket it has been found. When prompt return of public funds wrongfully taken has not been made, suits to recover the same have been promptly filed, and in every case where settlement is not effected,

the suit will be waged with unremitting zeal and vigor until final judgment and recovery.

The Attorney-General of the State has rendered services of the highest value in all these matters. His work has been characterized by signal ability, high conception of duty and unwavering courage. He has earned both your confidence and your gratitude.

The work done by the administration has been delicate and difficult. It has brought heart-ache and regret. It has left wounds which will be slow to heal. Some men have fallen. But, no matter how great the heart-ache, how profound the regret, how deep the wounds made, the public welfare demanded that the work be done. That it has been done, thoroughly and impartially done, stands, and will stand, throughout the impending campaign, a saving fact to the Republican party.

A political party that is strong and great enough to correct its own misdeeds and clean up the house it occupies, cleansing it of dirt, both old and new, with impartial care, whether made by itself or by a former tenant, is worthy of the confidence of any people. Such a party is qualified to administer government anywhere.

Whatever the cost has been, the thing achieved is worth it all. It makes it possible to uproot the system that has so grievously injured the public service and to supplant it with a better one. What you here this day declare for in this respect, your opponents will not dare leave out of their platform, and when it is crystallized into law, as it will be, a revolution in fiscal affairs will have been accomplished. And that is worthy of the ambition of any man, of any administration, and of any party.

The change already effected is profound and far-reaching. Ideals of public service, born of an awakened

civic conscience, are being accepted; conceptions of official obligations are higher, and public office is being administered with greater concern for the interests of the great public than for many years.

All this demonstrates that the Republican party is still entitled to govern in Indiana. The red current of progress still courses through its veins. It is still responsive to the best thought of the people. It still possesses the courage of its convictions. It dares declare what it thinks, and it dares write into law what it declares. In Indiana, at least, it grasps public questions and solves them with the vigor and ability of the olden time. It is still worthy its mighty and resplendent past.

Let no man be despondent. Let no man falter. Write into your platform the hot blood of moral purpose, the unquenchable spirit of God's simple truth, and your position will be impregnable. Do this, and you will challenge the thought and win the approval and the support of your countrymen at the polls in November.

INAUGURAL ADDRESS

Gentlemen of the Senate and House of Representatives:

A generously partial and confiding people by a verdict more nearly approaching unanimity than any ever before rendered by them, have confided to our care, for a time, the interests of the State, in so far as governmental agencies can effect such interests. Such an unexampled and unprecedented expression of trust and confidence by them, creates, by the inexorable law of compensation, obligation for us, without example or precedent. Their action rightly and accurately understood is a demand for the strictest possible accounting for our every official act—a call to the "better angels" of our natures, and in no instance is it to be construed into license to follow selfish or personal purposes either of our own or of others. Public reasons should underlie and impel every public act. That much the people demand. Less than that they will not long abide.

The oath of office which I have just taken here in your presence, in the presence of this concourse of our fellow citizens, and in the presence of Almighty God, like unto that so recently taken by each of you in your respective chambers, is a most solemn and binding obligation—one well calculated to impel whoever takes it to high and patriotic service. Cherishing as I do a belief in the existence of a just God, in the teachings of the Christ, and in the immortality of my own soul, the words "so

help me God" frame the most sacred pledge my lips can utter or my mind conceive. That oath now lies upon my conscience, and there it shall continue until the commission I have received shall be returned to the people who gave it. If I fail, and in some things I may fail, not one of my countrymen, including all those who have so generously trusted me, will be so deeply grieved as I myself shall be.

I congratulate you upon the happy auspices under which we begin our public service. We are assembled under conditions of unsurpassed material wealth and prosperity. Field, mine and factory have yielded rich reward to the efforts and industry of the wealth producers of the State. Labor is employed and hopeful. Farmers have witnessed a steady increase in values and in the accumulation of their savings. Merchants have enjoyed a growing and profitable trade. Manufacturers have held old markets and have gained new ones. Transportation companies have closed a year of unequaled profit, and banking and financial institutions, both State and national, that have to do with the savings and investments of the people, are upon sound and satisfactory footing. There have been few failures within the lines of legitimate business. Mismanagement and speculation in some instances have brought disaster. Some private banking institutions, for the supervision of which there has been in the law no adequate provision, and a few national banks, have closed their doors, but none of these has substantially affected general business or financial interests.

Public Institutions.

Usually fortunate in the administration of State affairs, we have been especially so during the last twelve years. In that time there has been no malfeasance in any public office of the State. Governor Matthews set

a high standard of executive efficiency and excellence, and the late Governor Mount raised that standard yet higher and inaugurated many wise and improved business methods in the handling and expenditure of the public revenues. Today Governor Durbin goes out of office after four years of executive service unexcelled by either of his immediate predecessors. He carries with him into private life the good will and kind wishes of our best citizenship, and he may justly feel that he has earned the confidence and the gratitude of his countrymen.

During his administration the public debt has been rapidly decreased and the annual interest charge materially lessened. Honesty and economy have characterized every department of the government. The correctional, penal, benevolent and charitable institutions of the State have received from him considerate care and efficient management. These institutions have been placed upon a plane far above partisan politics, and there this administration intends to keep them. There shall be no backward step. Above all personal and party obligations, however sacred and binding they may be, I hold the good of the State and the welfare of its unfortunate wards. There shall be no removals of persons holding positions in any of such institutions except for the good of the institutions themselves. Upright and efficient service will guarantee continued tenure of position. Negligent and incompetent service will insure immediate removal.

The policy of the administration in regard to the institutions of the State shall involve strict but sane economy. Value received shall be required for money expended. Necessary improvements will be insisted upon. Needed repairs will be made. To refuse actual needs is not economy, but extravagance. This applies

to the educational institutions with the same force that it does to the other institutions. In the days of hardship and privation our fathers established these schools. Shall we, their children, in our day of ease and plenty, refuse to provide for their needs or let them languish or deteriorate for want of means? Not so. Having established and maintained them until their usefulness has been successfully demonstrated and their fame has spread over the land to such an extent as to fill them to overflowing with an eager and virile student life, we can not abandon them now, and to refuse to recognize or provide for their necessities is a step toward abandonment. I do not believe we intend to take that step. And I therefore urge full and careful consideration of their wants to the end that their capacity, equipment and facilities shall correspond to the growth and development of the State, and shall equal at all times the demands made upon them.

Tuberculosis Institute Commission.

The proposition to establish a State hospital for the scientific treatment of tuberculosis promises so much in the way of the improvement, the cure and the prevention of that dread disease, as to deserve serious consideration. Experiments in New York, Rhode Island and Massachusetts have demonstrated the value of such an institution, and have turned the best thought of our people to the consideration of our duty in that behalf. In 1903 one death out of every four that occurred in the State from preventive causes was due to consumption. Deaths from that cause that year numbered 4,876, and for the year just closed deaths from such cause have not been fewer in number. There is high authority for the statement that scientific treatment under the favorable conditions to be secured in a State hospital will save to

useful life 49 per cent. of the persons treated, and bring improvement to 43 per cent. of the others. Such a work appeals to every humanitarian impulse of our people. The condition of the finances, however, is such as to preclude an appropriation by you for the immediate establishment of such an institution. But something can be done. An initial step can at least be taken. I recommend that a commission be created composed of five members, one of whom shall be a member of the Senate, two of whom shall be members of the House, and two of whom shall be practicing physicians of the State. Such commission should be invested with authority to investigate the subject and report the results of its investigation, together with such recommendations as it shall deem wise, to the next General Assembly for its consideration.

Additional Hospital for Insane.

The institutions for the insane have become inadequate to house this most unfortunate class of our population. They are daily refused admission to such institutions because of sheer lack of room to receive and care for them, and are, therefore, remanded either to the care of their own friends, or to the poor-houses and jails of the several counties, where they remain without proper care or treatment, a charge upon the county in which they live. Under such conditions the question of cure, or even of improvement, is practically eliminated from the problem. Irremedial and hopeless insanity is often the result, when under humane surroundings and rational scientific treatment, improvement or even recovery might be assured. Left in the poor-houses and the jails, without medical treatment or intelligent care, many of them become permanent charges upon the public, when a short term in a State institution would effect a cure and enable them

to return to their families and become self-supporting—an asset to the State instead of a liability. There are said to be 226 of such unfortunates in the State who have been committed upon inquisition to the hospitals for the insane, but who have not been received for lack of room, and 434 more who are proper subjects for inquisition and treatment.

In view of these conditions there can scarcely be dispute or debate as to the duty of the State. Its obligation is plain and imperative. A new hospital should be constructed. The people can act only through you, their chosen representatives. It is for you to say whether this condition shall continue. I can only suggest, but you can act. In behalf of the 660 neglected ones who sit in mental darkness amid unsanitary conditions and unwholesome surroundings, without medical or humane treatment, and without hope in the hearts of the friends who love them, I appeal to you. And lest you do not hear the appeal, or hearing, you forget, I beg you to remember the words of the great Teacher, for surely He must have thought of such unfortunate, stricken ones as these when He said: "Inasmuch as ye have done it unto one of the least of these, my brethren, ye have done it unto Me."

It has been suggested, and with some reason, that additions to existing hospitals should be built, rather than to enter upon the construction of a new one. The basis for such contention is that it will cost less money to build additions and afford more immediate relief. I am still of the opinion, however, that it will be better to establish a new hospital than to undertake to build such additions. If additions be built to the present institutions it will be necessary, at least in one instance and possibly in two, to enlarge the lighting and heating plants at such institutions. The enlargement of such

institutions until they will have sufficient capacity to care for a thousand patients each, will only meet present necessities. The total number that can be provided for in that way is 679. There are practically that many now who ought to be cared for by the State. A new institution will not only answer present demands, but it will provide for future needs and its establishment will cost but little, if any, more than the three proposed additions.

Need of an Epileptic Institute.

Closely connected with the question of an additional hospital for the insane is another matter of equally grave importance—the establishment of an institution for epileptics. Of these there are said to be 381 who are in the hospitals for the insane. There are many others in the jails and poor-houses, and still others at large; in all 920 who ought to be receiving the charity of the State in a properly appointed institution. A number of States have established such institutions. In Ohio, New York, Massachusetts and New Jersey epileptic colonies or villages have been in successful operation for a considerable time, varying from three to fourteen years. In such States the matter is no longer an experiment, but has become a part of the established policy of the State. The history of these institutions is most interesting. Five to ten per cent. of all patients received are cured, and there is marked improvement in many others.

Epilepsy is hereditary. Competent authorities estimate that one-third of those afflicted with the disease have inherited it and are therefore bearing the "blight of ancestral sins and woes." For these there is little or no hope of recovery. They are children of the State in the fullest possible meaning of the term. In two-thirds of the cases, however, the disease is said to be

due to other causes than heredity, and in most of such cases there is hope of improvement and often of a full return to intellect and strength. The nature of the malady is such that those who are afflicted with it must be denied the usual privileges of schools, entertainments, society and employment, and are compelled to grow up into adult life, ignorant, idle, isolated and neglected. Outdoor life, consistent diet, scientific and skilled treatment, congenial occupation and a sympathetic companship which lessens the sense of neglect and isolation that weighs so heavily upon them in the world of normal men, are essential to their improvement or recovery. These can best be had in institutional life. A village or farm colony, where its inmates may find opportunity to turn to useful account such faculties as have not yet been destroyed or impaired, and which are capable of development, and where something of home life and its sympathies may be had and enjoyed, affords the best plan for such an institution. The establishment of such a hospital can be justified also on economic grounds.

The insane and the epileptics in the poor-houses and jails of the several counties are already public charges, and unless cared for by the State, are destined to remain so indefinitely. There, they are costing from 40 to 50 cents a day for maintenance. They can be maintained in a State institution at a cost of from 17 to 20 cents a day. If the first cost of such an establishment be eliminated, State care is much more economical, considered from a money standpoint alone, than jail or infirmary custody. It is also more humane and scientific, and it precludes the epileptic from begetting his kind, a thing of incalculable future benefit to the race.

I am persuaded that the time has come in Indiana when we ought to take these worthy and dependent children of the State out of the poor-houses, the jails

and asylums, where they are a burden to the public and a horror to themselves, and care for them in a State institution as becomes our wealth and rank among the great States of the Union. The first appropriation need not be large. It is believed that $150,000 will be sufficient to purchase a farm and start the institution. To this, in the beginning, there should be sent only that class of epileptics most calculated to respond to treatment and best qualified to assist in the work of the construction and improvement of the institution.

The law providing for the establishment of an additional hospital for the insane, or of an epileptic institute, should provide for the appointment of a commission of not less than five persons to select and purchase sites for them, under such restrictions as to cost, area and location as, in your judgment, shall seem wise.

Finances of the State.

For twelve years we have been engaged in debt-paying. The record of the late administration in that regard is without precedent in the history of the State. There now remains but $1,207,000 of the bonded foreign debt; $407,000 of that sum is represented by 3 per cent. school fund refunding bonds of the issue of June, 1889. These bonds are payable at the pleasure of the State, but will not be due until June, 1909. The sinking fund tax rate of 3 cents on the $100 will produce this year a fund something more than sufficient to discharge this issue of bonds in full; $300,000 of the bonded foreign debt consists of 3½ per cent. funding bonds of the temporary loan of the issue of April, 1895. These are payable at the pleasure of the State after April, 1910, but will not be due until April, 1915. The remaining $500,000 of such debt consists of 3½ per cent. State House temporary funding bonds of

the issue of May, 1895, payable at the option of the State after May, 1910, but not due until May, 1915.

The present sinking fund tax rate of 3 cents on the $100 produces an annual sinking fund income closely approximating $450,000. This tax should be reduced to a rate sufficient only in amount to meet the bonded foreign debt when the same becomes payable in 1910. More than that is not needed and will only accumulate as idle money in the State treasury unless we go into the market and purchase bonds before our option to pay matures, a thing we ought not to do, to the extent which the present rate will make necessary if it be continued. Indeed, the present necessities of the State which can be met only out of the general fund, are such as to justify us in reducing the sinking fund tax rate to 1 cent on the $100. Such a rate will produce something like $750,000 by 1910, or within $50,000 of enough to redeem the entire bonded foreign debt the day the option to pay it matures, and five years before it is actually due. The repeal of the sinking fund tax in its entirety has been suggested, but that ought not to be done. Some provision should be left for the payment of the debt, and it should be sufficient in amount to meet it by the time it becomes payable under the terms of the loan.

The estimated expenses for the State government for the fiscal year ending October 31, 1905, including specific appropriations now available and the estimated cost of the present session of the General Assembly, are $463,000 in excess of the estimated revenues accruing to the State within such fiscal year. This condition of the finances will become an actual embarrassment to the treasury before the end of the current year. It can be met only by borrowing money outright or by anticipating the revenues for the next fiscal year. It is due to two causes. First, to the large appropriations made by

the last General Assembly; second, to a substantial invasion of the general fund for the purpose of making payments on the State debt. The sum of $140,379.45 has been taken out of the general fund during the last two fiscal years, $416,703.25 in three years and $521,-091.59 in four years, and applied to the payment of the State's indebtedness not yet due, at a time, too, when the general fund was already overdrawn, and when the revenues accruing to such fund were being anticipated far in advance. Bonds were bought in the market with money from the general fund in the face of the fact that there was sure to be a heavy deficit in that fund at the close of each fiscal year. Debt-paying is commendable, but the present embarrassment could have been saved by conserving the general fund and applying only the sinking fund to the payment of the debt, especially so as such fund would have been ample to meet the entire bonded foreign debt long before it would have become due. The revenues of the present year have been anticipated to the extent of $529,649.03.

The estimated revenues accruing to the general fund for each of the years 1906 and 1907 from the present levy, such estimate being based upon last year's receipts, will be $2,971,157, or $5,942,314 for the two years.

The regular expenditures for the administration of the State government, including the maintenance of the several State institutions, and not including specific appropriations for such institutions, based upon the year just closed, will be $2,364,630 for each of the years 1906 and 1907, or $4,729,260 for the two years. This would leave a balance in the treasury to the credit of the general fund of $1,213,054, from which specific appropriations for the years 1906 and 1907 might be made were it not for the fact that the expenses of the present year will exceed the revenues, as heretofore

shown, something like $463,000, which deficit must be supplied either by borrowing money or by anticipating the revenues for 1906. Deducting the deficit of $463,000 from the balance of $1,213,054, left in the treasury after paying the regular estimated expenses of the two years, we have a balance of $750,054 from which specific appropriations can be made, whereas the institutions already established seem to be actually in need of specific appropriations for the two years of $1,174,596, or $424,542 in excess of the money that will be available for that purpose.

In addition to the needs of the present State institutions, there is urgent need, as before suggested, for the construction of an additional hospital for the insane, and for which, if it be established, there will have to be appropriated not less than $500,000 for the two years. There is also a like need for the construction of an epileptic institute, for which not less than $150,000 should be appropriated.

If these two institutions are established and appropriations made as suggested, and we make the provision that the existing State institutions actually require and make good the deficiency for this year, it will necessitate specific appropriations for the two years aggregating $2,287,596, or $1,074,542 in excess of the estimated revenues available for that purpose within the two years.

These facts make it apparent that we must either fail in our present responsibility to the institutions already established and refuse to construct either of the new hospitals suggested, or we must provide additional sources of income for the general fund. After much thoughtful consideration I am persuaded that we ought to adopt the last course, rather than the first, and I therefore recommend that the sinking fund tax rate be reduced to 1 cent; that the 2 cents taken off of that rate

be transferred to the levy for the general fund and that the tax rate for the general fund be increased by an additional levy of 1½ cents on the $100. The 2-cent levy transferred from the sinking fund to the general fund will produce, approximately, $600,000 in two years, and the additional levy of 1½ cents will bring into the treasury substantially $450,000. These sums, together with the $1,213,054 remaining to the credit of the general fund after the payment of the regular expenses of the two years, will aggregate $2,263,054, or within $24,542 of the total expenses for the two years, with existing institutions properly cared for and with two new and much needed institutions substantially established and the present deficit made good. I make this recommendation with unfeigned reluctance, because of the great expenditures involved and of the increase of the State tax levy which such expenditures make imperative, but I have been able to devise no other way, as satisfactory, to meet the confessed institutional needs of the State. While we have been debt paying at an unprecedented rate the needs of the State's institutions have been multiplying and can not longer be deferred. It will be better to meet these needs now frankly and boldly than to shirk our responsibility by refusing to recognize them and leaving the helpless and unfortunate wards of the State in poor-houses and in jails, charges upon the respective counties where they live. A rich and prosperous people will respond generously to the one policy, but I am persuaded that they would be slow to forgive the adoption of the other. Nor will the increased burden long continue. The 1½ cents added to the general levy may be removed in two years and in six years the remaining 1 per cent sinking fund levy may also be removed, for at the end of that period

there will remain no bonded debt to be provided for or paid.

For these reasons I most earnestly recommend the adoption of the plan herein mentioned, and sincerely hope it will meet with your approval upon full consideration and debate. The deed, if done, will square itself with the years.

Prison Trade Schools and State Workhouses.

An act of the General Assembly, approved March 11, 1903, created a prison commission composed of the warden of the State Prison, the general superintendent of the Indiana Reformatory, the secretary of the Board of State Charities, and of three members to be appointed by the Governor. Under that act the commission has been organized, and its members have given much time to the investigation of the questions referred to them, and after thoughtful consideration they have submitted certain conclusions to you in the form of a report, which I understand has been laid before you. That report should challenge your attention as a whole, but I respectfully urge upon your consideration two recommendations contained therein. The first is the suggestion that a convicted prisoner who is given a jail sentence is the prisoner of the State, and should be under direct State control in some institution of the State where he can be employed at useful labor, instead of being confined in jail and kept in idleness under county control.

A system of workhouses under State control, in which all male prisoners convicted of crime, which under existing law is made punishable by imprisonment in the county jail, shall be confined, is proposed. I can not discuss the details of the report of the commission in this behalf, but I am impressed with the belief that the

suggestion contains the practical basis of a much needed reform.

The second recommendation involves the abandonment of the contract labor system in the State Reformatory and the employment of the prisoners there in a school of letters, in trade schools and at labor on State account. The existing labor contracts at the Reformatory will expire in July, 1906, and, in my judgment, ought not to be renewed. Some employment for the prisoners of the institution must of necessity be provided, and it should be of a character that will affect in the slightest degree possible the laboring and producing classes of the State. The system of contract labor now in force compels free labor to compete with convict labor and forces manufacturers into competition with prison-made goods, and fixes and establishes prices of such articles in a damaging measure.

The employment of prison labor on such account, that is to say, in the production of articles to be sold by the State or used by the State in its various institutions, or by the political divisions thereof, has been demonstrated to be practical and of all methods least objectionable to free labor and production and most satisfactory to all the people. Such method of employment, together with trade schools and the school of letters recommended by the commission, is in harmony with the humane principles and reformatory methods already adopted and in use by the State in the care and treatment of the prisoners under its control. The labor contracts at the State Prison do not expire until October, 1910. If the method recommended by the commission be adopted for the Reformatory by the present General Assembly its value will have been practically demonstrated before we are called upon to meet the question in the State Prison. The recommendation represents the best thought

of those most competent to advise upon this most important subject and deserves your highest consideration.

Continuance of Codification Commission

Pursuant to the provisions of an act of the General Assembly, approved March 9, 1903, a commission was appointed in April of that year to prepare a compilation, revision and codification of the laws of the State concerning public, private and other corporations, and statutes relating to highways and drainage, and such other statute laws as such commission should deem proper. The commission has prepared a report which is already before you, together with several bills embodying the results of its labors. Its report covers a wide field and includes a number of difficult and important subjects, such as cities and towns, drainage, proceedings in the exercise of the power of eminent domain, private corporations, highways, and the criminal code. The report and the bills accompanying it deserve the best thought of each of you. The varied and important subjects treated affect closely many interests of the people and the corporations of the State.

Taken as a whole, the work of the commission, as presented to you, constitutes the most important legislation likely to come before you. While each of the prepared bills should be scrutinized, analyzed and debated with care and critical intelligence, the skill, learning and ability of the members of the commission are so well known and their work has been done with such zeal and intelligence that I commend the results of their labors to you with full confidence that they can, in the main, safely be accepted.

The life of the commission expires by limitation of the law which created it, with the adjournment of the present General Assembly. There are still many im-

portant and difficult subjects affecting many vital interests that have not as yet been considered. Revision is greatly needed as to them. In fact, the work of the commission will not be complete, or the purpose of the law creating it obtained, if the labors of the commission are to end with your adjournment. A knowledge of this leads me to the conclusion that the life of the commission should be extended for a period of two years, to end with the adjournment of the next General Assembly.

The whole subject is of such imperative moment that I venture to express the hope that you will not fail to enact the several bills submitted after such amendment and alteration as upon full debate and consideration you may deem wise, and that you will not fail to continue the commission as suggested.

State Supervision of Private Banks.

Sound banking institutions are absolutely essential to stable financial, commercial or industrial conditions. This is so true that years are required for a community to recover from the effects of a single bank failure. The losses occasioned by such failures are not confined to savings alone. These, of course, are swept away, but such failures are always attended with a betrayal of trust and of confidence that does far more to injure the business interests of the community and society in general than the direct money loss sustained can possibly accomplish. Men who have known each other for years and who have had full confidence in each other suddenly become doubtful and suspicious with a resultant disturbance of business and commercial affairs and the embarrassment of other perfectly solvent and safe institutions.

The number of private bank failures in this State within the last year constitutes irrefragable proof of the

need of legislation which will give the State authority to inspect and supervise every private firm, partnership or institution engaged in any manner in the banking business. In some of the recent failures of private bankers an investigation of their affairs made after assignment has disclosed the most flagrant and criminal disregard of the rights of their depositors. In some instances the savings of patrons of the bank have been checked out by the proprietors within twenty-four hours after they were deposited, and by them converted to their own use. In one instance, at least, this was done to an extent of almost $300,000, and the fact of such malfeasance concealed and covered up for years. A trusting and confiding clientele was robbed daily, week after week, month after month and year after year, in the most reckless manner, the possibility of which is a reproach to the State.

The people whose earnings have been embezzled and squandered, together with every man engaged in honest private banking, of whom there are many in the State, rightly demand relief at the hands of their representatives. The question should be taken up with considerate care, having due regard for the interests of both the private banker and the depositor.

No private individual, firm, co-partnership or institution of any kind should be permitted to use the word "bank" in connection with its business, or to receive the deposits of the people, or to engage in any manner in the business of banking, without first setting aside a cash sum as capital to be maintained unimpaired so long as such business is conducted. The sum required as capital I submit to your intelligent judgment, but it should be adequate in amount, taking into consideration the character of the community in which such bank is located.

There should also be an inhibition against the loaning of money, either directly or indirectly, to any person, firm, co-partnership or corporation, either as principal or surety, beyond a fixed and reasonable sum, taking into consideration the amount of paid-up capital of each institution.

In connection with the above requirements the State should be given full power of inspection and supervision, through an officer to be appointed for that purpose, and such officer should be required to give bond and should be held liable civilly upon such bond and be subject to criminal prosecution for the neglect of his duty or for malfeasance. While these restrictions will not prevent bank failures, I am persuaded that they will go far, if enacted by you, toward minimizing their number and extent.

State Railroad Commission.

Railroads are public highways and the business of operating them is a public business. Their existence is due wholly to the fact that they are public utilities. When they cease to serve the public, the reason for their being ceases. Modern conditions make the "transportation tax" a most potential factor in the commerce of the country. It affects every product of the field, shop or mine and levies tribute on both producer and consumer. Up to the limit of fairness the tax can be justified; beyond that it can not. It is possible for freight rates to determine not only where business shall be done, but who shall do it. In the absence of legislation those who pay the tax have no voice whatever in determining what it shall be. The carrier arbitrarily determines that for itself. Having power to make freight rates, and freight rates being the controlling factor in determining where and by whom business shall be done, the carrier becomes the master, and the people it was created to serve its servants.

That the common law, the courts and their remedies are inadequate to afford any practical relief as between the shipper and the carrier, or even between carriers themselves, is now quite generally conceded.

That the competition of carriers, markets and waterways has ceased to be a sufficient safeguard against the evils that necessarily grow out of and accompany the country's vast transportation business is also a generally accepted truth.

Neither Congress nor the General Assembly of the State has time to investigate and fix transportation rates, and both are precluded by constitutional limitations from conferring legislative functions upon the courts.

Some impartial tribunal to act as arbiter to determine questions as to rates and collateral subjects, rather than the sellers of transportation, is, therefore, a modern necessity.

These considerations led some years since to the creation of a federal commission by the Congress of the United States, upon whom both judicial and legislative power was attempted to be conferred—the judicial power to declare an existing rate to be unjust, and the legislative power to determine what the rate should be thereafter. The purpose of the statute has since been aborted by a decision of the Supreme Court of the United States holding that the act gave no legislative power to the commission to fix rates, but conferred only judicial power to determine that a specific rate was unjust. For instance, under the decision of the court the commission may declare that a 20-cent rate was too high, but it has no power to say what a just rate is. The transportation company is left free to impose a 19-cent rate until it in turn may be declared unjust and set aside, and so on *ad infinitum*. The effect of the

court's decision is to emasculate the statute and leave little of it worth preserving.

The power of Congress to confer upon a commission both judicial power to decide what is unjust and the legislative power to declare what is right, is not open to debate. That has often been judicially determined. And a like power is vested in the General Assembly of this State in regard to commerce within its own borders.

While the Congress of the United States has sole jurisdiction of all transportation questions relating to interstate commerce, the State is sovereign in its jurisdiction of all such questions in so far as they relate to inter-state commerce. The question is a live one, and is of great importance not only to the shippers and the transportation companies of the State carrying on interstate commerce, but to every producer and every consumer in the State.

The question is a difficult one and deserves your most considerate care and intelligent judgment. Its consideration should be entered upon dispassionately and should be continued without prejudice against or a desire to punish the transportation companies of the State. On the other hand, the wealth and power of such companies ought not to be permitted to exclude the people or the needs of the shippers, the producers or the consumers of the State from your consideration. As between the two you should hold an even balance.

Like considerations have led to the establishment of railroad commissions in thirty-one States of the Union, and in twenty of these the commissions are given power to establish rates.

The same considerations that led to the creation of the Interstate Commerce Commission by the Federal Congress and to the establishment of commissions in

other States, now make it imperative that a State railroad commission be created by this General Assembly.

Such commission should have power, not only to decide that an existing rate is illegal and unjust, but it should also be given authority to determine what would be a legal and just rate and to declare the same. And the rate, when so fixed by the commission, should stand until reversed by the judgment of some appellate tribunal to which the right of appeal should be provided for.

Without the power to fix rates, the commission would not be effective. If the evils sought to be reformed are to be reached, the power mentioned is essential. The law should also be so framed as to prevent unreasonable and inexcusable delay in the transportation of freight or cars, or unjust discrimination in rates, either by way of rebates or otherwise. It should also prohibit discrimination against localities in furnishing cars and should have some provision relative to the transfer and switching of cars. Bills of lading, releasing or limiting the common law liability of carriers with reference to property covered by such bills while in the custody of such carrier, should be prohibited, and the commission should have power to hear and determine differences affecting any of the matters suggested, whether arising between shippers and carriers, or between the carriers themselves.

The recent and growing desire for national ownership of railroads is due very largely to the unjust rates, rebates, discriminations and arbitrary conduct and management of the great transportation companies in their relations with the public. I am sure such a policy is a mistaken one. And I am equally sure that the enactment of a just and fair law, creating a railroad commission and clothing it with power to correct the abuses that have grown up in connection with the

transportation business of the country, ought not to be opposed by the managements of such corporations. Indeed, they ought to consent to the enactment of a law which shall provide for fair and just supervision through a properly constituted commission. By consenting to the correction of such abuses they will do much to stay, and perhaps to avert, the more radical sentiment of the country just now crystallizing in the demand for public ownership.

Free Pass Evil a Form of Bribery.

A custom of giving and receiving free transportation has grown up, on the part of transportation companies on the one side, and of public officials on the other. These favors are not bestowed upon the same men in private life, but are extended to them only upon their elevation to public place. They are given as complimentary, and are bestowed quite generally, with here and there an exception, upon the officers of every department of the Government, municipal, county or State. Indeed, it is not unusual for officers whose duties do or may affect the interests of such companies, as against the interests of the public, to accept not only free transportation from the railroad companies, but free telegraph and express franks from telegraph and express companies as well.

It is said in defense of the custom that such favors are mere gratuities or courtesies, the acceptance of which creates no obligation to the donor on the part of the officer receiving them, and that many honest men accept these favors and are not improperly influenced by them. It scarcely can be urged, however, that such favors are either given or accepted from a sense of civic pride or righteousness. The fact that some men receive them without any recognition of the favor implied by such

acceptance and are not improperly influenced thereby is an imperfect defense, for it is of itself a confession that some men who accept them are improperly influenced. There are no more practical business men in the world than the managers of the great railway, telegraph and express corporations of the country, and these men would not annually give away to public officials in Indiana thousands of dollars in value of such favors if the net aggregate results of the custom were not beneficial to them. If the resultant benefits were not worth more to them than the value of the transportation or franks given, none would be issued.

The fact that the custom is continued year after year is strong evidence that it pays to continue it. No lawyer would permit a juror to remain upon a jury where high interests of his client were involved if he knew such juror had received and accepted substantial favors from the adverse party to the suit, and he would most certainly insist upon the discharge of such juror from the panel if he were to receive and accept such favors after he had been sworn as a juror in the cause. If, in any such case, the verdict went against his client, and after verdict he learned the fact of the juror's acceptance of such favors from the hands of the successful party to the suit, there is no lawyer who would hesitate to make such fact the basis of a motion for a new trial, and there is no court that would not grant the motion upon proof of the charge made. The plea on the part of the offending litigant and juror that the favors given and received were mere courtesies and did not influence the verdict would be neither considered nor received as a sufficient answer.

The officials of the various municipalities and counties, and the officials of the State, constitute the jury before whom are brought countless grave and important inter-

ests, upon the one side of which are the corporations and upon the other side of which are the people. For this reason such officials have no right to use or accept substantial and continuing favors from the corporations during their terms of service. Where the whole jury accepts them there need be no surprise if the people complain that the jury is packed against their interests. Right or wrong, ill or well-founded, such a feeling is an unwholesome one. The simple truth is that the custom is wrong and indefensible and often leads to abuses little short of scandal. Reduced to their last analysis, such favors are petty bribes. The fact that they sometimes fall short of their purpose is not a sufficient answer. The tendency of the custom is to make men—not all men by any means, but some men—servile to those from whom they are received. An end should be put to the custom. The abuse of free transportation and free franking privileges should stop.

The time to reform is now. In recognition of the plainest principles of right, in common honesty, in answer to the people's just demand and out of protection to themselves, public officials should discontinue the use or acceptance of such favors. I submit for your consideration the enactment of a statute that will prohibit the giving of free transportation or of the franking privilege to any official, municipal, county or State, by any person or corporation, or the acceptance of any such favor by any such officer, either directly or indirectly, under such penalties as shall insure its observance. The inhibition should also include telegraph and express company franks. Such an act will purify and strengthen the public service and, in my judgment, will meet with the hearty approval of the people of the State.

Lobbyists Not Safe Counselors.

The character of the legislation coming before you for your consideration is such as to bring to your respective chambers the representatives of many great corporations. It is right that they should be heard, but it is wrong that they should exclude from your consideration the varied and important interests of the public or the great mass of the people who, of necessity, can not have paid agents to voice their interest to you. All lobbyists are not corrupt, and it may be that they sometimes perform useful public service, but the paid agent of any special interest is not, as a rule, a safe counselor. He is wont to look only to the interests of those who employ him, and in his zeal to "make good" with them, to forget the greater and more important interests of the public.

Corporate interests of late have become far too powerful in legislative assemblies. This is true in most of the States, and it has been true in ours. There have been instances in the not far distant past when the paid agents of such corporations invaded the sacred precincts of the General Assembly and with unseemly and arrogant assumption took their place upon the floor during a session of that body, and on a roll call upon a measure involving matters of the gravest concern to the people, sought to dictate the votes of some of the members upon such measure. And, yet, they were not removed nor denied the privileges of the floor, but continued to enjoy them until the end of the session. It is difficult for the people to believe that such conduct would have been tolerated, much less condoned, by men who owed no favors to the corporations represented by the offending agents. You can end the reign of the lobbyist in Indiana if you will, and I venture to express the hope that you will do so.

Nicholson Law Amendment.

The act of the General Assembly of 1895, commonly known as the "Nicholson law," was enacted in answer to the demands of an aroused and enlightened and righteous public sentiment. In the main it is a good law and ought to be permitted to stand. It provides for, and legalizes the right of petition on the part of the legal voters of any township, or of any ward in any city, against the granting of license to any applicant to retail intoxicating liquors in such township or ward, and that right ought not to be given up or surrendered.

Rules of practice under the present statute and many questions of law relating to its enforcement have been settled by the courts, and are now established and well understood. The several sections of the act have been so frequently interpreted by the courts that the law, taken in connection with the decisions touching its meaning, constitutes a system for the control of the retail liquor traffic of such importance that the friends of law and order ought to stand by it as it is, rather than consent to its repeal, or to the substitution of any new or untried system. An entirely new act would require years of vexatious litigation before a judicial interpretation of it could be had, or its meaning be established or understood.

There is, however, a grave defect in the present statute. It can be remedied by an amendment, which will add greatly to its effectiveness, without impairing its value or destroying the decisions of the courts which have upheld it.

The aroused, enlightened and righteous public sentiment which made essential the enactment of the law ten years ago, now makes imperative its amendment. That sentiment is today stronger, more enlightened and

more powerful than ever, and deserves quick and satisfying response at your hands.

The defect to which I direct your attention is found in Section 9 of said act. This section grants to a majority of the legal voters of any township, or of any ward in any city, the right to remonstrate in writing against the granting of a license to any applicant for license to sell in any such township or ward, and provides that after the filing of such remonstrance, it shall be unlawful for the Board of County Commissioners to grant a license to such applicant during a period of two years from the date of the filing of such remonstrance. By this statute the right of remonstrance is vested in the majority of the legal voters of any township, or of any ward in any city. But the right is limited in its application to a remonstrance against the individual seeking the license and not against the trade, whereas the business of retailing liquors is the evil sought to be excluded or prohibited by the people who remonstrate against an applicant. Their objections are not personal, nor are they directed against the applicant as an individual. They are based upon moral, economic and public grounds, which affect the order, the peace and the repose of society within such territory, and are against the traffic itself. To the people within such territory the prohibition of the business is everything, and the individual applying for license is nothing.

When the statute under consideration was enacted, the boards of commissioners of the several counties in the State could hold regular sessions of their respective boards but once in three months. An application for license could be filed only at a regular session. Thus, applications were limited to the four quarterly sessions of such boards held within each year. This brought the question of remonstrance before the people but four

times a year. Since the enactment of the "Nicholson law" there has been a change in the statute relative to the time of the regular meetings of boards of commissioners. Such boards are now required to meet in regular session once each month. The effect of this change in the law has been to make it possible for an application from any township, or any ward in any city, to be filed every thirty days. This brings the question of remonstrance before the people twelve times a year. Those who desire to engage in the retail liquor traffic make use of the present provision of the law, to the annoyance and harassment of the people of many townships and city wards. In some of them "eternal vigilance" has ceased to be the price of liberty and has become ineffectual to preserve the rights of the people. A remonstrance carrying the necessary majority to prevent the granting of license is filed today and the license is defeated, but tomorrow some other applicant, in the pay of the wholesale liquor interests, gives notice of his intention to apply at the next session of the Board of Commissioners, which session is only four weeks away.

If a new remonstrance is filed and the second applicant is defeated, the same performance is enacted by some one else, and so on, month after month and year after year, until worn out and discouraged by constant effort and expensive litigation that never ends, and from which there is no respite, the people are defeated and the will of the majority is overborne and trampled upon by the agents of a traffic, the unholiness of which all men, save those engaged in it, confess.

This condition is intolerable, and ought not to continue beyond the day of your adjournment and the publication of your enactments. It destroys the peace and disturbs the order and tranquility of society, creates constant and unceasing turmoil among the people, sub-

jects them to frequent trials and constant expense, and finally ends in the defeat of their often and solemnly expresed will.

The statute should be so amended that the remonstrance provided for shall be against the granting of license to any and all applicants, and where successful, that it shall be unlawful thereafter for the Board of Commissioners to grant a license to any applicant therefor during a period of two years from the filing of said remonstrance. Such a remonstrance will strike directly at the traffic, and not at the individual. If successful, it will exclude the business from a township or ward for a period of two years, and give peace, order and repose to the community.

It will give the right of petition a practical and an efficient application, and will go far toward satisfying public sentiment upon this most difficult question. Such an amendment will not impair the system created by the "Nicholson law" for the control of the traffic, nor the judicial interpretation it has received. On the contrary, it will strengthen and give vitality to its provisions. The precedents already established will remain precedents still.

I have given much thought and consideration to this subject, because of its importance, because I have been and am conscious that many of my fellow-citizens, whose judgment and good will I greatly value, have been and are profoundly interested in the question, and have been and are giving it their most sincere attention, and because many members of your respective bodies have been and are considering remedial legislation affecting the existing statute.

Public sentiment relative to such legislation never was as strong nor as purposeful as it is today, and I would, if I could, direct that sentiment along safe and

practical lines. I therefore appeal to you, and to the great body of the people of Indiana, without regard to party affiliations, to join in an effort to secure the amendment suggested. The question is not a party question. It is above and beyond all parties and is as broad as our common citizenship, as deep as our free institutions, and as abiding as righteousness itself.

Respect for the Law.

There are multiplying signs throughout the country of a growing respect and regard for the sacredness of the law that are reassuring and hopeful, and nowhere is this sentiment more pronounced than in Indiana. While lawless assemblages, riots and lynchings have decreased within the last year in all the States taken as a whole, there has been none in Indiana. It is my most sincere wish and hope that this condition may continue; that respect for the law may increase, and that the sentiment for its enforcement may intensify throughout the borders of the State until all shall recognize its majesty and give willing obedience to its mandates. The law is freedom's only safeguard; without it there can be no such thing as liberty.

Whoever wilfully disregards or violates it pulls down the pillars of his own house and sins against his country, his institutions and his kind. And this applies with equal force to all men—to the rich and the poor, to the great and the small, to the capitalist and the laborer, to the public official and to the private citizen. Before the law all these must be equal, and they shall be so considered by this administration. The law shall be enforced without fear or favor, in the cities, in the country and everywhere, in so far as the administration can control its enforcement either by precept, example or mandate.

In Conclusion. This address has already grown too long, but there are so many important questions upon which I have not touched that I close with reluctance. I do not forget that all my predecessors in the high office to which I am called, were capable and efficient executives; that many of them were much more than that, and that one, at least, was supremely great, or that I must in some degree measure up to them. I am conscious that in the discharge of the grave duties that await me I can not stand alone and I shall not try to do so. I therefore turn to you and to the people of the State for assistance and support. To you and to them I shall often come, and were it not for the confidence I have in your forbearance and for their partiality, I should have little hope of succeeding amid the multiplying and perplexing difficulties of the coming four years.

But your strength shall be my strength, and their will shall be my will. I believe in you, and they, I am sure, will not go far astray nor long remain away from the path of truth. Both you and I can safely trust them. They did not fail either Lincoln or Morton in their day, and they will not fail us in ours if we do but prove worthy and fitly bear their high commission.

Humbled and chastened by the responsibilities of this hour, by those yet to come, and by the memory of the great men who have preceded me; sustained by an abiding faith in my fellow-citizens and by an unfaltering trust in the goodness, the mercy and the guiding care and wisdom of Almighty God, I now assume the office of chief executive of this, to me, the dearest State in the great Republic.

EXECUTIVE DECISION

In the Matter of the Application for the Pardon of David E. Sherrick, and Reasons Therefor. Dated April 7, 1906.

Petitions signed by several thousand citizens of the State, requesting the pardon of David E. Sherrick, late Auditor of State, have been filed in the executive office and have been presented for executive consideration and action.

Mr. Sherrick is in the State Prison under sentence of the Criminal Court of Marion County, for embezzlement of the funds of the State coming into his hands while Auditor of State. An appeal from the judgment of the trial Court to the Supreme Court of the State has been prayed and granted. The cause is, therefore, still pending in the Courts. Most of these petitions were formally presented to me on the 2nd inst., by Mr. Smiley N. Chambers, Mr. John B. Conner, Mr. William D. Cooper, and the Rev. D. R. Lucas.

While the petitions themselves ask for the pardon of Mr. Sherrick, the gentlemen who presented them did not do so. They made "no other recommendation than to ask that Mr. Sherrick be paroled until such time as his case might be determined by the Supreme Court."

The petitions are said to contain 21,000 signatures, more than 11,000 of which are said to be the signatures of citizens of the city of Indianapolis. The large number of signatures has been urged upon my considera-

tion as an evidence that the people of the State desire favorable executive action in this case. It has been also urged that executive clemency ought to be extended in response to "this general sentiment of the community."

In giving consideration to these petitions as an index or evidence of public opinion, it is well to recall the facts and circumstances under which they were circulated and signed. It is common knowledge that they were circulated simultaneouly in almost every section of the State and the signatures obtained by an organized, systematic and well-directed campaign, and at a time and in a manner best calculated to appeal to the sympathy of those to whom they were presented. They were circulated and most of the signatures obtained in the interval between the return of the verdict of the jury and the ruling of the Court upon the motion for a new trial, and before sentence was pronounced. In fact, quite a number of them were on file in the executive office before the judgment of the Court was rendered. Many persons to whom they were presented did not know the facts of the case, and would not have signed them had they been conversant with the facts. That this is true is evidenced by personal statements made to me by many persons who signed them, and by letters received from the several communities in the State where they were circulated. The answers to the questions propounded to the gentlemen who presented the petitions, disclose the fact that even some of these gentlemen did not know the facts. Others to whom the petitions were presented, signed them upon impulse and without consideration either of the facts, of the attendant circumstances, or of the importance of the issue involved in the action requested.

It is well also to remember in this connection that the defendant was until recently the incumbent of a high

office and that he possessed a wide acquaintance throughout the State. The fact that less than 10,000 persons outside of the city of Indianapolis signed the petitions, in view of the campaign and the extraordinary effort made to secure signatures, and of the facts and circumstances surrounding the case, is strong evidence that the great mass of the people of the State are not in sympathy with the purpose of the petitions and do not desire favorable executive action thereon. Many hundreds of letters have been received at the executive office from points throughout the State, and from persons of high standing and character, urging me to refuse the prayer of the petitions. These letters are not prompted by impulse, nor are they the result of an organized or well-directed campaign. They are the voluntary expressions of thoughtful men who appreciate the great public interests involved in the case, and are a much surer and safer index of the sober, thoughtful and enduring sentiment of the masses of the people than these petitions are.

The power to pardon is an executive function and under the constitution belongs exclusively to the Chief Executive of the State. It is a high power, and is to be exercised with great care. It was vested in the Governor because of the great responsibility of the office, and in the belief that it would be used only upon mature deliberation, and never from impulse or caprice. It was not intended that it should be exercised in any case merely in response to what, for the moment, might appear to be public sentiment. The man who happens to be, for the time, vested with this power, has no right, either legal or moral, to use it in a personal way. He may not use it to save his friend, nor may he refuse to use it because his enemy would be the beneficiary of its use. It is vested in him for public purposes alone.

Where the guilt of the beneficiary of the exercise of

such power is clear and without palliating fact or circumstance, public opinion, however strong it might be, would not be a sufficient justification for its exercise, and this is especially true where the crime is great and involves grave public interests affecting the administration of affairs of State. The crime of which Mr. Sherrick has been adjudged guilty is a grave one. It strikes directly at the administration of public affairs. It involves the betrayal of public confidence, and is, therefore, doubly dangerous to the State. If it were conceded that a widespread sentiment favorable to the exercise of the pardoning power exists in the present case, that does not of itself justify the use of such power, unless there is substantial doubt of Mr. Sherrick's guilt, or some palliating circumstance or fact of controlling importance.

No such doubt exists, and no palliating fact or circumstance is called to my attention either by the petitions themselves or by the words of those who presented them to me. The only basis for executive clemency offered in the petitions is found in the following paragraph:

> "David E. Sherrick is a victim of circumstances and a practice followed by practically all State, county and township officers within our State for fifty years past, however vicious such practice may have been, rather than any deliberate criminal intent upon his part."

There is in this statement one fundamental defect. *It is not true.* One of the gentlemen who presented the petition to me, informed me in the course of his remarks on the occasion of the presentation of the petitions, that he had refused to sign them because they contained this statement and because the statement was false. He himself had been a State officer. He knew he had not been guilty of the crime of which Mr. Sherrick was convicted. He could not sign the petition without indicting

himself, and he therefore declined to do so. This statement, since it contains the only facts mentioned in the petitions upon which executive clemency can be predicated, challenges consideration and analysis. If it is not true, then no basis for favorable executive action is offered by the petitions. While it is well known that Mr. Sherrick was convicted of the crime of official embezzlement, the facts of his embezzlement have been so often mis-stated as to deceive the general public. It has been said that his crime was a technical one; that he did no more than loan the public funds coming into his hands and appropriate the interest, and that all public officers,—State, county, township and municipal,—have done the same thing for many years. The statement in the petitions quoted above, is predicated upon this contention, but the contention is absolutely without foundation either of fact or circumstance. For these reasons it is important that some official public statement be made of the facts as they actually are. In what I am about to say, I do not speak from the record in the trial of the cause. I do not have that before me, but I do speak within the purview of the indictment upon which Mr. Sherrick was convicted, and within the facts of the case; facts, too, which are without dispute, and which cannot be successfully disputed. When the Supreme Court reviews the record of a cause on appeal, it is bound by the record. It cannot go beyond it. But this rule does not apply to a case when it reaches the Governor upon an application for executive clemency. It is the duty of the Governor to consider all the facts in the case of which he has or may obtain any knowledge. He may consider the guilt or innocence of the applicant. He may consider the character of the crime itself, with all its attendant circumstances; the effect it has had, or the effect its repetition may have upon society, and the

administration of public affairs. He may consider the fairness of the trial, and the character of the defense made, if any. He may consider any new evidence discovered after the trial, which goes to the question of the guilt or the innocence of the applicant. He may consider the habits, character and the past life of the applicant. All these things are proper subjects of consideration in the exercise of the high power of executive clemency.

Mr. Sherrick entered upon the duties of the office of Auditor of State in the month of January, 1903. He was without property and without other income than his official salary. This salary is fixed by law at $7,500 per annum. He was indebted at the time in the sum of $20,000. Immediately upon coming into office he took $20,000 of the public moneys coming into his hands, with which to pay his personal indebtedness. Within four months after his induction into office, he visited French Lick Springs, where he lost in less than thirty days, more than $9,900 of money in gambling. At that time he had received but one quarter's salary. Other than that, he had no money of his own. His gambling debts at French Lick were paid by checks drawn upon banks where the public funds in his care were deposited, and they were paid by these banks out of the public funds. From that day to the day of his resignation, he was a defaulter to the extent of many thousands of dollars. The use of the public funds in the payment of his individual debts was not "loaning the funds and using the interest accruing thereon," as it is charged other public officials have done. It was a criminal conversion of these funds to his own use. It was embezzlement. The use of more than $9,900 of public funds, and their loss at the gaming table, was not "the loaning of the funds." It was the conversion of them

to his own use in an unlawful and criminal business. It was embezzlement. Under the law as construed by him, himself, it was his duty to make semi-annual reports to the Treasurer of State, in January and July, of the fees and moneys coming into his hands as Auditor of State, and thereupon to pay to the Treasurer of State all such fees and moneys. By far the greater portion of the money coming into his hands each annual period, was paid to him in the months of January and July of the respective settlement periods. When the first semi-annual settlement period came, Mr. Sherrick did not have the funds on hands with which to make settlement. He did not have these funds, not because he had loaned them, but because he had used $20,000 of them to pay his own individual debts, and had lost $10,000 of such funds in gambling. His report was therefore delayed until the 23rd day of July, and the moneys coming into his hands for this, the first month of the new semi-annual settlement period, were used to make up the shortage occasioned by his embezzlement of the funds coming into his hands during the first semi-annual settlement period, and to enable him to make the settlement required by law. But that was not payment to the State. On the contrary, it was an affirmative, deliberate act of official malfeasance, resorted to for the purpose of concealing and covering up his embezzlement of the public moneys coming into his hands during the preceding semi-annual settlement period. It was in no sense an accounting to the State for the money he had received during the time covered by his report. The use of the State's money coming into his hands during the first month of the second semi-annual settlement period to make good the defalcation occurring during the first semi-annual settlement period, did not change in any way his position or his relation to the State. He

was still a defaulter. The second semi-annual settlement, due in January, 1904, was delayed until February 4, 1904, and delayed to enable him to use the funds coming into his hands during the month of January to meet an increased defalcation in the second semi-annual settlement period. His third semi-annual settlement was delayed for a like reason until August 1, 1904; his fourth until January 31, 1905, and his fifth until August 26, 1905. This last settlement was made in answer to the imperative, persistent and oft-repeated demand of the Governor of the State, and to make it he used $144,-141.49 of the money coming into his hands after his settlement was due.

In each of these semi-annual reports and settlements, the law required him to account for and pay over to the Treasurer of State all fees and moneys coming into his hands and for whatever purpose received. These reports were required to be verified. Prior to his resignation he made five reports. In that time (that is, from the months of January, 1903, to September 14, 1905,) he collected miscellaneous fees in the sum of $6,978.07, which he sequestered, converted to his own use and omitted from his reports. Of most of these fees no public record whatever was kept, and not a dollar of them was reported or paid to the Treasurer while Mr. Sherrick was in office. When he resigned, his total defalcation, exclusive of interest, amounted to $151,-119.56. His defalcation did not grow less, but, on the contrary, it constantly increased.

In addition to the money used in riotous living and lost at the gaming table, he invested the public funds in mining stocks, in oil well stocks, and in other speculative securities, which were bearing no interest, and from which he had no right to expect any substantial return during his term of office. These facts conclusively

prove, and none of them are the subject of dispute, that Mr. Sherrick is guilty of something more than the technical violation of the law. They demonstrate beyond doubt that he systematically and constantly, from the day of his induction into office until the day of his resignation, converted to his own use, squandered, gambled away and embezzled the public funds. And it is, therefore, not true that he is the victim of "a practice followed by practically all State, county and township officers within our State for fifty years past." Indeed, there is not even a semblance of truth in such a statement. Many of those who have urged this false statement of fact with most vehemence and have made loudest outcry about it have known its falsity from the beginning. Others have been imposed upon and have used it innocently, but have thereby contributed to the deception of the public.

It is quite proper, in considering this application for executive clemency, to inquire how Mr. Sherrick administered the other affairs of his office. In the month of December, 1904, previous to the convening of the General Assembly in January, 1905, Mr. Sherrick, as Auditor of State, addressed a letter to the officials of certain railway companies doing business in the State of Indiana, asking them to forward to him for distribution among the members of the General Assembly, all railroad passes which such companies intended for the use of members of the General Assembly, stating that he had some prospective legislation of personal concern to himself, and that he would see to it that the interests of the companies were cared for along with his own. In many instances this was done, and the office of the Auditor of State became for weeks a broker's office for the distribution of free railway transportation to members of the General Assembly.

At the meeting of the Board of State Tax Commissioners, held in July and August of 1905, the question of the valuation, for the purpose of assessment, of the Monon Railway, came before the members of the Board for their consideration in executive session. Some of the members of the Board believed the existing valuation of the road to be too low, and desired that the valuation should be raised. Mr. Sherrick very vigorously opposed any increase in the valuation. He supported his position with such poor logic and reason as to excite remark. After the adjournment of the Board, and in the presence of the members of the Board, he was asked by the Governor for an explanation of his conduct. He said that his act was due to the fact that an attorney, then residing in Chicago, who was his warm personal friend, and to whom he was under many obligations, had requested him to keep the valuation of the Monon Railway Company where it then was as a personal favor to him, and had said that if such valuation could be kept without increase, that he, the Chicago attorney, would be able to get permanent employment as counsel for said railway company.

Those are only two instances of many that could be cited where the official conduct of Mr. Sherrick was such as to deserve the condemnation of every honest citizen of the State, and, taken in connection with his systematic, studied and long-continued embezzlement of the public funds, they are such as to preclude absolutely executive clemency.

I am compelled to believe that many men who signed the petitions on file in this case would have refused to do so had they known all the facts connected with Mr. Sherrick's administration of his office.

It is said in the petitions that Mr. Sherrick was the victim of circumstances. If so, they were circumstances

of his own making. The system of loaning the public funds for the individual profit of public officers, which has grown up in Indiana, is not responsible in any substantial degree for Mr. Sherrick's crime. There was nothing in this system, however devotedly he might have followed it, which compelled him to take public funds to pay his private debts, or to take public funds for investment in speculative mining stocks, or to hazard public funds at the gambling table. The system referred to is bad enough; so bad, in fact, as to be a reproach to an honest people such as ours, and it will have sins enough to answer for without charging it with the crimes of Mr. Sherrick. A bad system rarely, if ever, destroys an honest man, or one fit to be clothed with the responsibility of high office. If Mr. Sherrick had been looking for precedent, he could easily have found one in the record made by his immediate predecessor, whose reports were made on the day the law required, and who paid, without the delay of an hour at each of the semi-annual settlements, every dollar of the moneys of the State he had collected. It is apparent from the facts in the case that Mr. Sherrick was not searching for precedent. On the contrary, he was engaged in blazing a new way,—a path at the end of which shame and disgrace inevitably lay.

It has been said that he intended no wrong, and that he had no criminal intent, but no impartial and fair-minded man can read the record of his acts and believe such a statement. How can it be said he intended no wrong when he took public funds with which to pay his private debts? How can it be said he intended no wrong when he took public funds and invested them in speculative securities from which he had no right to expect a return within his term of office? How can it be said he intended no wrong when he took thousands

of dollars of the public money and gambled it away, or when he expended other thousands of such funds in riotous living?

A man must be held to intend the reasonable and probable results of his acts, and he may not, after having committed great crimes for a long period of time, escape punishment upon the plea that he intended no wrong in the commission of them.

It was suggested by those who presented these petitions that Mr. Sherrick and his friends have made good his defalcation, principal and interest, and that this fact should be considered as a palliating circumstance. This statement also deserves consideration. It has the same fundamental defect as the statement heretofore quoted, —*it is not true.* The defalcation has been made good and the State has lost no money, but the credit for this is not due either to Mr. Sherrick or his friends. When Mr. Sherrick resigned his office, certain securities were turned over by Mr. Reed, a deputy in his office, to the Governor of the State, and afterward placed in the hands of Mr. Reed as Receiver in the suit upon Mr. Sherrick's official bond. These securities consisted of a few promissory notes and a number of speculative mining stocks, in which Mr. Sherrick had invested the public funds. Information came to the Governor and to the Attorney-General of the State, which disclosed the fact that the State's funds had been invested in these securities and that they had been used to pay Mr. Sherrick's private obligations; that the men who received them knew them to be State funds when they so received them and so applied them. Under these facts and the law of the land, the title to the money was not divested, it still remained in the State, and the State had the right to follow and recover its funds. The Attorney-General was instructed by the Governor to require the persons who

had thus received the moneys of the State to return it to the State, and to proceed to do so without fear or favor. This the Attorney-General did, and, in case after case, the persons who had received these funds paid them back because they were compelled to do so to escape prosecution. Two banks which had received the public funds in satisfaction of a personal indebtedness due to them from Mr. Sherrick, paid back $25,000. A number of other persons from whom mining and other stocks had been purchased, returned the money they had received, and took back their stocks. W. S. Wickard and the Murray Lumber Company had received a large sum of the State's money, ostensibly as a loan, amounting in the aggregate to more than $50,000. The greater portion of this money was used by Mr. Wickard to take up his notes, upon which Mr. Sherriek was security, in a certain bank in the city of Indianapolis. The bank knew when it received these funds that it was receiving public funds. The Attorney-General was directed to prepare, and he did prepare, a complaint to which he made the bank a party, and in which he charged these facts. A copy of it was served upon the officers of the bank, and they were informed that it would be filed the next day at the hour of two o'clock unless the money of the State was returned to it. This money was returned within forty-eight hours. More than three-fourths of the defalcation was made good through collections made by the Attorney-General in the manner stated above. Therefore, it is not true that either Mr. Sherrick or his friends made good his defalcation. The zeal, the ability and the courage and integrity of the Attorney-General, acting under the direction of the Governor, alone saved the State from loss. After all this was done, there was still a shortage of something like $25,000 or $30,000. Of this sum, the surety of Mr.

Sherrick's official bond paid $6,000. The balance was raised by the friends of Mr. Sherrick. The sum thus raised,—some $25,000 or $30,000,—represents substantially the amount of the public funds which Mr. Sherrick had gambled away in two years and a half, and lost in midnight orgies, or in other criminal practices. And, in the face of these facts, I am asked to extend him executive clemency, *on the ground that he intended no wrong and had no criminal intent.*

It has been urged that executive clemency should be extended to him, at least to the extent of a parole, because of the high position he held, because of his prominence in public affairs, and because of the shame and disgrace that would come to him through the execution of the sentence pronounced by the court. Sitting as the Governor of the State he has so deeply wronged, this plea does not appeal to me. The fact that he held high position, that he was prominent in affairs, and that he had great opportunity to serve the people whose commission he had obtained and whose confidence he held, does but aggravate his crime and magnify his offense.

It is said that the law has been vindicated by the conviction and sentence of Mr. Sherrick, and that the execution of the judgment ought to be suspended or stayed. If this be true in the present case, there is no reason why it could not be said or why it would not be true in every case. Conviction and sentence do not vindicate the law. Without the execution of the law's judgment, conviction and sentence would be a sham. They would not deter infractions of the law; they would not protect society. Few of the persons who signed these petitions would believe in or would be willing to defend this doctrine if it were applied to cases of robbery, child stealing, burglary, entering a house to commit a

felony, obtaining money by false pretense, counterfeiting or manslaughter. And yet the penalty in each of these cases is less than the penalty imposed for the crime of which Mr. Sherrick is guilty. In each of the cases named the maximum punishment is fourteen years. In official embezzlement it is twenty-one years. Therefore, it must be held that official embezzlement is, in the eyes of the law, a graver crime than any of the offenses named. How, then, can it be said that the law is not vindicated by verdict and sentence in such cases, but is vindicated in the graver and more far-reaching offense? The position is not tenable. This case more profoundly concerns the public welfare than any of the cases named, and the law is not vindicated until its sentence has been executed. The minimum punishment is two years. The maximum punishment is twenty-one years. It may be that executive clemency may be properly exercised somewhere between these periods. That I do not now decide.

The law, the law of Indiana,—is made for all men, for the rich and the poor, the great and the small, the prominent and the obscure, and, in so far as I have a voice in its administration, it shall fall upon all men alike, while I am Governor, without regard to who they are, or what position they hold or may have held. The man in the lowly walks of life is required to abide by the law. He may never have had a fair chance or opportunity in life; he may be a waif upon the street; he may know little of his relation to his fellows, of his duty to society, or to the State; he may be hungry and cold, but if he breaks the law and does but take only so much of another man's property as to satisfy his hunger, or to protect him from the cold, he is made to feel the weight of the law he has broken. To obtain his pardon no campaign is organized. As to him the law is left to take its course. I see no

reason why a different rule should obtain where the man who infracts the law holds high position or is the child of great opportunities.

As an individual my heart is heavy with grief that Mr. Sherrick betrayed the trust confided to him by a generous people, and is guilty of the crimes of which he has been tried, convicted and sentenced. I am grieved beyond measure that the circumstances and facts of the case do not permit executive clemency. If this were a personal matter, Mr. Sherrick should go free now. But it is not. Decision in this case is not the act of an individual, it belongs to the office, it is the act of the Governor of the State. I am compelled to eliminate from my mind all questions of friendship, of party ties, of public sentiment, or of personal sympathy, and to decide the question upon its merits alone, with a view only to the public good, to the welfare of society and of the State, and to the maintenance of a proper standard of administration of public affairs. Viewed in this light, and in the light of the undisputed facts and circumstances of the case; my oath of office, the law and my official duty coerce me into the denial of the application. I believe Mr. Sherrick had a fair trial. The facts were and are without dispute. The jury could not have done less under their oaths than they did. The case is still pending in the courts. If error of law has been committed, it will, no doubt, be corrected. But even though error of law shall be found to have intervened in the trial of the cause, the fact will remain unchallenged and unchallengeable, unchanged and unchangeable, that Mr. Sherrick is guilty of one of the gravest crimes known to the law. The application is therefore denied.

J. FRANK HANLY,
Governor of the State of Indiana.

April 7, 1906.

VETO MESSAGES

Legislative Session of 1905. Executive Appointments.

February 20, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 48 without my approval.

I do so with reluctance and regret, for I am conscious that my act may be criticised by some of the persons whom it is attempted to make beneficiaries under the bill. I have, also, a sincere and profound appreciation of the services rendered by the soldiers, sailors and marines of the country. Their valor and sacrifices saved and preserved the integrity of the Republic and carried its flag in a march of glory around the world.

But for the fact that my duty to the State precluded my doing so, I would have gladly signed this bill. After the best thought of which I am capable, however, I am compelled to believe that the good of the public service and the welfare of the institutional life of the State, penal and benevolent, require that the measure should not become a law. I have therefore preferred to accept the hazard of criticism rather than lack the courage to do what has seemed to me to be a plain public duty.

The bill provides that any honorably discharged soldier, sailor or marine of the United States, who is a resident of Indiana, and who makes application for

appointment, and who served in the Civil War, the war with Spain, or the war in the Philippines, and who

"is honest and competent, shall be given the preference for any appointment to be made by whatever administrative authority conferred by the State of Indiana to any position paying not more than ninety dollars per month in any penal institution, benevolent institution, public building or other institution or employment maintained or conducted by the State of Indiana."

This would compel the appointing power to appoint them in every such instance, or, by the act of non-appointment, to brand them either as dishonest or incompetent. Failure to appoint them could be justified, under the law, solely upon the ground that they are either dishonest or incompetent. I cannot sign an act that would compel me to do that.

It will be observed that the proposed law does not require the preference to be given to the class named where their qualifications are equal to the qualifications of other citizens, but whenever they are applicants and are "honest and competent."

"Competent" is defined by the Century Dictionary to mean "having ability or capacity." There are degrees of competency, degrees of ability, and degrees of capacity. Ten men are applicants for a position; all of them may be competent; all of them may have ability; and all of them may have capacity; but some of them are more competent, have greater ability and possess greater capacity than some of the others; and of the ten one is most competent, has the greatest capacity and possesses the greatest ability. In such a case he is the one of all the ten who ought to be appointed, for the welfare of the State and the good of the public service or of the institution the control of which he is to assume. Under the proposed legislation he could not be appointed if any one of the ten applicants happened to be an

"honest" soldier, marine or sailor who is competent to discharge the duties of the position, though it stands confessed that such soldier, marine or sailor is the least competent of all the ten applicants.

It is now forty years since the Civil War closed and the armies of Grant and Sherman returned to civil life,—more than an average lifetime. Few survivors of that war are today under sixty years of age. Physical and mental infirmities have impaired in many instances both body and mind.

The above language limits the appointing power of the entire executive and administrative departments of the State in making appointments to any positions in the service of the State where the compensation is not more than ninety dollars per month, to soldiers, sailors and marines of the United States, who served in either of the wars named, whenever any such soldier, sailor or marine, who is "honest and competent," is an applicant.

If citizens of the class named in this bill are entitled to appointment to all positions in the public service where the compensation is not more than ninety dollars per month, upon application made by any of them who are "honest and competent," then they are equally entitled to appointment to all positions in the public service upon application made by any of them who are "honest and competent," however great the compensation or arduous and difficult the duties of such positions.

I do not understand why an arbitrary limitation to positions paying not more than ninety dollars per month has been made. It cheapens the class of citizens it seeks to befriend, and is in effect a legislative declaration that the public services of all such citizens are limited in value to less than ninety dollars per month,—a declaration in which I decline to join.

Should this bill become a law, every appointment made in any of the institutions of the State where the compensation is not more than ninety dollars per month; every member of every board of trustees, board of control or board of managers of any such institution; every member of every police board in every city operating under the metropolitan police law of the State; and every appointive position in every department of the State government not paying more than ninety dollars per month, would have to be made from ex-soldiers, sailors or marines of the United States, if any such were applicants for appointment and any of such applicants were "honest and competent."

While many of them are still entirely competent to discharge the duties of any position included within the provisions of this bill, many thousands of them are competent to do so only in a limited sense, and have certainly ceased to be the most competent persons for such positions. Not all, but many of them, lack the strength and fiber, the tenacity of purpose, the firmness of will and the grasp of large affairs essential to the most capable and efficient administration of the great penal and benevolent institutions of the State—institutions requiring the expenditure and handling of hundreds of thousands of dollars of public funds each year. Yet the boards of control of all these institutions, under the provisions of this bill, would have to be made up of soldier, sailor and marine applicants if they were "honest and competent," though they were far less competent than thousands of other and younger men in the State, whose services could be had if the executive or appointing power were left free to select from the entire body of our citizenship.

This administration will not be satisfied with merely competent men for the State institutions. It insists

upon having the privilege of selecting the *most competent* and the *best men* for these positions afforded by our entire citizenship, if such men can be induced to enter such service.

Every one upon whom the responsibility of these appointments has ever rested has found the field from which to select none too large, though he had the whole body of citizens from which to make selection.

Then, too, the public service ought to be open to all men and the State ought not to be deprived of the services of its best and most capable citizens by any limitation whatever. This is especially true of the State institutions mentioned. If there be any citizens whose services to the country in time of war and whose fitness for these positions justify the partiality of the appointing power, and they are found to be willing to accept positions in the public service, this administration will be only too glad to avail itself of their services and thereby recognize the services they have already rendered in behalf of the country on the field of battle.

Another well-known fact to those who have had experience in public affairs touching the management of our State institutions is that the best and most competent persons, those who possess the highest qualifications for positions on the institutional boards, are rarely found among those who are applicants for appointment thereto. The necessity of going outside of all applicants and of selecting men whose character, habits and peculiar ability give them special fitness for such positions, has been felt by every man who has occupied a position with appointive power.

In some instances I have already gone outside of all applicants and selected persons whom I have believed to have a special fitness for the position in question, and I hope to do so many times during this administra-

tion, unless prevented by restrictions laid upon me by legislative action.

If I can find such men among the soldiers, sailors and marines of the wars named, I shall be glad indeed to recognize their services to the country in the hour of its need and appoint them. But if I cannot, I shall unhesitatingly make selections of others, feeling that in so doing I am only discharging my duty to the State whose servant I am. The administration ought to be left free to call to its aid the services of the most competent men in the State without regard to past military service.

In vetoing this bill I am simply saving to one of the States of the republic the Union soldiers, sailors and marines fought to save, the opportunity of obtaining the highest and best possible administration of its public affairs. The motive that prompts me to do it does not widely differ from the motive which prompted the soldiery of the country to the performance of its duty in the years gone by.

LOCAL AND SPECIAL ACTS.

February 23, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 17 without my approval.

The bill seeks to legalize a certain gravel road proceeding in Orange County, to validate the bonds issued therein and the assessments made for the erection of a fund with which to retire such bonds. The measure is special and local in its character. It has application to

but one county in the State and to a particular proceeding in that county, and involves the assessment and collection of taxes for road purposes to the extent that it seeks to validate the bonds issued and the assessments levied for their retirement.

Section 22 of Article 4 of the Constitution of the State provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say * * * For laying out, opening and working on highways * * * * For the assessment and collection of taxes for * * * * road purposes."

As the case sought to be reached by the bill now stands, the bonds issued in the proceedings sought to be affected are invalid, and the assessments are also invalid, because of errors in said proceedings.

The measure under consideration is forbidden by the Constitution. It is an attempt to validate said proceedings, said bonds and said assessments. It is, therefore, in effect, an attempt to authorize an assessment and collection of taxes for road purposes by an act local and special in character, and is clearly within the constitutional inhibition.

The question here involved has recently had the consideration of the Supreme Court of the State in the case of Board vs. Spangler, reported in the 159 Ind. 579, where the unconstitutionality of a like statute is declared.

In that case a proceeding for the establishment of a free gravel road in Owen County was pending at the time the act of February 7, 1899, limiting the issue of bonds or other evidence of indebtedness for the construction of free gravel or macadamized roads to four per centum of the total valuation of the taxable property of the township, became a law. On March 4, 1899, an act, containing an emergency, was passed, exempting

proceedings in counties having a population between 15,000 and 15,050, and which were pending at the time of the taking effect of the first act, from the provisions of said act.

Afterwards, relying upon the validity of said act of March 4, 1899, a contract was let in said gravel road proceedings in Owen County for a sum in excess of four per centum of the taxable valuation of the property of the township in which such road was located.

In 1901 the General Assembly passed a curative act, solely applicable to said proceedings in Owen County, by which all of said proceedings and said bonds were declared validated.

In the bill returned herewith said proceedings in Orange County, including the contract, the bonds and assessments, are sought to be validated substantially as it was sought by the act of 1901 to validate the contract, the bonds and the assessments in the Owen County proceedings.

In the Owen County case the court held that while Owen County was not mentioned by name in the act of March 4, 1899, the court would take judicial notice of the fact that such act applied to Owen County alone, it being the only county in the State having a population between 15,000 and 15,050, and that the act, in effect, sought to provide that the provisions of the general act of February 7, 1899, limiting the issue of bonds, should not apply to certain described proceedings to improve gravel roads in the county of Owen.

In passing upon the validity of the act of March 4, 1899, the court said:

"The attempted exclusion of pending proceedings for the improvement of gravel roads in Owen County from the operation of the general law prohibiting an issue of bonds for gravel road purposes in excess of four per centum of the taxable valuation

of property of the township, was in effect an attempt to provide by a local law not alone for an issue of bonds, but for the levy of a tax that, under existing law, constitutes the means of retiring such bonds. We think that it was not competent for the General Assembly to make such exception. The act of March 4, 1899, does not purport to be a curative act, and it is not curative in the sense of attempting to validate a past proceeding, but we think that its validity is to be tested by the considerations that are applicable to statutes that purport to be curative. In cases where it would have been originally competent for the General Assembly to have authorized particular proceedings upon the part of a board or other official, the same source of power may originally validate the proceedings; but unless the General Assembly had the power to have authorized the proceedings originally by an act that in its substance would have been of the same character as the curative act, then the curative act would be invalid. Walsh v. State, ex rel., 142 Ind. 357, 33 L. R. A. 392; Schneck v. City of Jeffersonville, 152 Ind. 204.

"The act of February 7, 1899, was general in its character, and if it had contained an exception that excluded from its operation proceedings generally that were then pending, we take it that it would not have thereby lost its general character. It cannot, however, be contended with any show of reason that it would have been competent to have limited said act so as to exclude from its operation proceedings to improve highways in Owen County, thereby legislating for Owen County in such particular. This is in substance what it was sought to do by the act of March 4, 1899. As the subject of the legislation falls within Section 22, of Article 4, of the State Constitution, we hold that the proceedings could not be validated by any act that could properly be characterized as local or special."

The curative act of 1901 was also held invalid for like reason. In speaking of that act, the court said:

"The act of 1901 is also invalid. The attempt to validate the contract and the assessment of taxes to pay the bonds upon their maturity were abortive, because of the special and local character of the act; and as it is not to be presumed that the issue of bonds would have been declared validated by the General Assembly, had it been advised that there was no power to retire such bonds in the manner proposed, the entire act must be regarded as a nullity."

I believe the above case is decisive of the question involved in the bill returned herewith; that it is controlling upon both the legislative and executive departments of the State government, and therefore precludes me from giving it my approval.

It is, perhaps, proper, however, to suggest that the relief sought by this bill is not improper, and that a general measure validating all gravel road proceedings in the State, where the defects in such proceedings are only technical in character, would be a valid exercise of the legislative power.

March 1, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 92 without my approval.

The bill authorizes and directs the county council of Spencer County to appropriate, for the payment of the unpaid court expenses of the Spencer Circuit Court for the year 1903, a sum of money sufficient to cover and pay such unpaid expenses, not exceeding $250.00.

There is nothing in the bill to disclose what is included in the words "unpaid court expenses," an appropriation for the payment of which is ordered. I have been informed, however, that such unpaid expenses consist of fees due certain citizens of said county for jury services rendered in said court during said year. These persons are, it is said, sixty-four in number, and their unpaid claims vary in amount from $2.00 to $6.00 and aggregate $241.15; that said last named sum is in excess of the appropriation made by said Spencer county county council for court expenses for said year; that the excess exists because of the fact that the terms of said court

were extended by an act of the General Assembly passed after the county council of said county had made the appropriation for court expenses for said year; that the fact that such appropriation was exhausted was not observed by the judge of said court, nor called to his attention by the county officials, until near the close of the November term of said court for said year; that there was the utmost good faith in the entire transaction; that the services were honestly rendered, the money honestly earned by said jurors, and that they ought to be paid. It is also said that the county council of said county has refused to make an appropriation for the payment of such fees, and that they remain unpaid because of said failure to make such appropriation.

The bill is local and special. It applies only to Spencer county, which is referred to by name. It is clearly within the constitutional inhibition contained in Section 22 of Article 4 of the Constitution of the State, which provides;

> "The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * * Regulating county and township business."

The term "county and township business" has been defined by the Supreme Court as follows:

> "The term 'business,' when applied to a public corporation, signifies the conduct of the usual affairs of the corporation, and the conduct of such affairs as commonly engage the attention of county and township officers."

Mount, trustee, v. The State, ex rel. Richey, 90 Ind. 31.

I have had occasion heretofore to criticize the decision rendered in the above case, in so far as it held constitutional legislative acts for the reimbursement of public

officers on account of public funds lost by them. I am, however, in accord with the definition given in the opinion in said case upon the question now under consideration. The correctness of such definition has since been recognized by the Supreme Court and has never, to my knowledge, received judicial criticism.

In a later opinion it is said, with reference to the above definition:

"This statement of the law is, we think, correct and especially applicable to the case now before us * * * *."

Mode v. Beasley, 143 Ind. 316.

In this case it is held that the seventeen inhibitions contained in Section 22 of Article 4 of the Constitution are absolute, and that the Legislature has no discretion or right of judgment relative to the subjects therein named. The court said:

"One of the seventeen subjects embraced in that section, and thereby put beyond the power of the Legislature to pass a local law upon it, is the subject of 'regulating county and township business.'"

The provisions of the bill under consideration bring it clearly within the above definition of "county and township business."

If "county and township business," as used in the Constitution, signifies the conduct of the usual affairs of the corporation, and the conduct of such affairs as commonly engage the attention of county and township officers, it certainly includes the act of making an appropriation by the county council for the payment of the expenses of the circuit court of the county. It also includes the allowance for jury fees by said court, and their payment upon the warrant of the auditor by the

treasurer of the county. These duties,—making such appropriation, allowing such fees and paying such jurors,—are clearly devolved by the law upon the members of the county council, the judge of the court, and the auditor and the treasurer, all of whom are officers, who, when so acting, are engaged in the conduct of the usual affairs of the county.

It may be conceded that the claims of the several persons included in the appropriation ordered to be made by the terms of the bill are just, and that they ought to be paid. But the fact remains that the General Assembly has no power to authorize their payment. If the claims are just, it is the duty of the county council to make an appropriation for their payment. That duty is devolved upon them by the law. They have full authority to act. The appeal that justice be done these claimants should be made to such council and not to the Legislature.

The claim provided for in the bill is little, it is true, but if the bill were to become a law it would establish a bad precedent, and a bad precedent based upon a little claim is as dangerous as if it were based upon a large one. If this bill were to become a law, it would in a few years become quite the custom on the part of those having claims against counties, which the county councils of such counties have refused to recognize, to come to the General Assembly for relief, and secure the passage of measures ordering and directing such councils to make appropriations for the payment of such claims. Such legislation is against public policy, is clearly unconstitutional, and cannot receive my approval.

March 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 374 without my approval.

The bill provides for the construction of court houses in all counties of the State having a population of not less than 20,870, nor more than 21,000. In effect, it divides the ninety-two counties of the State into three classes, viz: those having a less population than 20,870,—those having a population of more than 21,000,—and those having a population between 20,870 and 21,000.

The provisions of the bill apply only to the last named class of counties. It will be noticed that the difference in population between the counties of the first class, having the maximum population, and those of the second class, having the minimum population, is only 130, and that the counties of the third class, and to which the provisions of the bill apply, must be found within that narrow limitation.

In terms the bill is general, but no one is deceived thereby. In effect, it is local and special, and applies to but one county in the State,—Monroe, that being the only county in the State shown by the last United States census to have a population between 20,870 and 21,000. No other county in the State comes within the limitation named. In all such cases the subterfuge for arbitrary classification might as well be dispensed with, and the name of the county sought to be affected boldly written into the bill. The measure under consideration might as well have contained the name of Monroe county, and have been entitled, "An act concerning the construction of a court house in Monroe county." Its meaning would have been exactly the same, and, in

addition, it would have been an honest declaration of its purpose. The ostrich that hides its head in the sand, believing its body to be thereby concealed, fools no one but itself.

That such acts are local and special in character has been decided by the Supreme Court so often and so recently that the decisions ought to be fresh in the minds of even the laity.

In re. application of Bank of Commerce, 153 Ind. 474;
Board v. Spangler, 159 Ind. 579;
School City of Rushville v. Hayes, 162 Ind. 198;
The Town of Longview v. City of Crawfordsville, No. 20,274, handed down January 13, 1905.

In the second case cited above, an act of the General Assembly, approved March 4, 1899, making an arbitrary classification of counties between those having a population of 15,000 and 15,050, according to the last Federal census, was under consideration. The court said:

"This court takes judicial notice of the population of the counties of this State according to the Federal census of 1890. It is, therefore, advised that the only county in this State that had a population between 15,000 and 15,050, according to the Federal census of 1890, was Owen County. As the population referred to in said act was to be determined according to a particular past census, so that other counties could not subsequently enter the class, it is apparent that by said act the General Assembly, in effect, sought to provide that the provisions of the general act of February 27, 1899, should not apply to certain described proceedings to improve gravel roads in the county of Owen. * * * * The attempted exclusion of pending proceedings for the improvement of gravel roads in Owen County from the operation of the general law * * * * was in effect an attempt to provide by a local law not alone for an issue of bonds, but for the levy of a tax that, under existing law, constitutes the means of retiring such bonds. We think that it was not competent for the General Assembly to make such exception. * * * * As the subject of the legislation

falls with Section 22, of Article 4, of the State Constitution, we hold that the proceedings could not be validated by any act that could properly be characterized as local or special."

The Sixty-third General Assembly enacted nine laws arbitrarily establishing classifications of counties and cities upon differences of population varying, as to the classes legislated for, from 5 to 1,000. In considering one of these acts in a recent case, the Supreme Court said:

"Its legal foundation is not more secure than if it had been declared to apply to all cities and towns bearing the name of Rushville, as shown by the last preceding census. The classification is entirely arbitrary and artificial, and the plain command of the Constitution cannot be evaded by so weak and transparent a device.

"Let it be supposed that the act of March 9, 1903, supra, is valid, what provision of the Constitution cannot be rendered nugatory by similar evasions? If cities and towns may be classified according to trifling differences in population, so may counties and townships. By means of statutes, general in form, but local and special in purpose, resting entirely upon slight differences in population, every provision of Article 4, Section 22 of the Constitution may be successfully evaded.

"Inferior in dignity and force of obligation only to the Constitution of the United States and the acts of Congress and treaties made under it, the State Constitution is the supreme law of the commonwealth. It is to be interpreted and applied in a reasonable manner; it is to be observed and obeyed, and not evaded and defeated by distinctions and classifications which rest upon no rational or natural basis, and which deceive no one. When it declares that the General Assembly shall not pass local or special laws providing for supporting common schools and for the preservation of school funds, its mandate cannot be defeated by creating a class of cities differing in no material respect from scores of others in the State. The mere convenience of local communities, the financial necessities of particular cities, the conflicting views of citizens on the subject of the necessity for the erection of school buildings, are not sufficient to authorize legislation which the Constitution pro-

hibits. Attempted evasions of the Constitution, the object of which is to meet and overcome such local and special condition cannot be tolerated. A due regard for the highest interests of the citizens of the State requires that all constitutional limitations and restrictions shall be firmly and constantly enforced."

The School City of Rushville v. Hayes, 162 Ind. 198.

In the case of the Town of Longview v. City of Crawfordsville, supra, construing another act of the Sixty-third General Assembly, in a decision rendered as late as the 13th day of January, 1905, the same court said:

"In jurisdictions where classification is permitted by the organic law, it is settled that the same, in order to furnish a basis for legislation that will exempt it from the charge of being special, must be a classification which in the nature of things suggests and furnishes a reason for, and justifies the making of the class. The reason for the classification must inhere in the subject matter, and the same must be natural, not artificial. Under this rule, neither mere isolation nor arbitrary selection is proper classification."

In the statute above referred to the classification made was based on a difference of 1,000 in population. The court held it to be an arbitrary classification, and in the course of its opinion said:

"Applying these tests it is evident that the classification in said act is merely arbitrary and cannot relieve the same from the infirmity of being special and local. There is no reason inhering in the subject matter of the act for giving the power mentioned therein to cities of a population between six and seven thousand according to the last preceding United States census, and not giving the same to the other cities in the State."

In the measure under consideration the classification of counties is based upon a difference in population of only 130, and is, therefore, clearly within the rule above declared.

There can be no doubt of the local and special char-

acter of this bill. That fact is established, and may as well be admitted. To admit the local and special character of the bill, however, is to admit its invalidity, if we keep in mind the fact that its purpose is the construction of a court house in Monroe County.

The Constitution provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * * Regulating county and township business."

Article 4, Section 22, State Constitution.

Constructing a court house is county business. That it is county business has been clearly and unequivocally decided by the Supreme Court in an able and well-considered opinion filed January 8, 1904.

Board v. State, 161 Ind. 618.

In the above case the question was fairly presented and pointedly decided. It involved the validity of an act providing for the change of the county seat in Newton county and the construction of a court house in said county. Speaking of the question presented the court said:

"The decision of the question involves the inquiry (1) is the building of a county court house for county purposes with county revenue county business * * * * * * * * *. If, when the Constitution was adopted, the building of a county court house, with county means, upon county grounds, for county purposes, was generally considered and treated over the State as county business, and was intended by the Convention to be embraced within the classification of county business, as contained in Section 22, Article 4, then it must be held that the Legislature had no power to pass a local or special law regulating the same. To regulate is to direct by rule or restriction. The phrase 'county business' has no prescribed or technical meaning,

and the definition must be sought in the previous history and practices of the State."

After a careful and learned review of the history and practices of the State in this regard, including consideration and review of the debates in the Constitutional Convention upon the question, the court continues:

"From these considerations, and others that might be brought, we come unhesitatingly to the conclusion that the building of court houses in the several counties of the State was understood by the people and framers of the Constitution as being county business, and was intended by the latter to be embraced by the term as implied in Section 22, Article 4."

I am thoroughly convinced that the provisions of the bill under consideration, making an arbitrary classification of counties based upon a difference of 130 in population, make it local and special in character.

I am equally well convinced that providing, as it does, for the construction of a court house, it is a measure to regulate county business, and is within the inhibition of Section 22, Article 4, of the Constitution.

March 9, 1905.

Mr. President and Gentlemen of the Senate of the Sixty-fifth General Assembly of the State of Indiana:

I deposit herewith Senate Bill No. 235 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill is entitled "An act concerning the city court and the judge thereof in cities of more than 36,500 and less than 43,000 inhabitants, as shown by the last preceding United States census, and declaring an emergency." It is, however, in fact an act regulating the

practice in certain courts of justice in the class of cities named and for the punishment of crime and misdemeanors. It is local and special in character, and is within two of the inhibitions contained in Section 22, Article 4, of the State Constitution.

In effect, it divides the cities of the State into three classes, viz: those having a less population than 36,500,—those having a population of more than 43,000,—and those having a population between 36,500 and 43,000.

The provisions of the bill apply only to the last named class of cities. The difference in population between the cities of the first class, having the minimum population, and those of the second class, having the maximum population, is only 6,500, and the cities of the third class, to which the provisions of the bill apply, must be found in that narrow limitation.

In terms, the bill is general, but no one is deceived thereby. In effect, it is local and special, and applies to but one city in the State,—Terre Haute, that being the only city in the State shown by the last United States census to have a population between 36,500 and 43,000. No other city in the State comes within the limitation named. In all such cases the subterfuge of arbitrary classification might as well be dispensed with, and the name of the city sought to be affected boldly written into the bill. The measure under consideration might as well have been entitled, "An act to regulate the practice in certain courts of justice and for the punishment of crimes and misdemeanors in the city of Terre Haute." Its meaning would have been exactly the same, and, in addition, it would have been an honest declaration of its purpose.

(The several decisions set forth in the veto of Senate Bill No. 235, showing that such acts are local and special in character are here reiterated.)

* * * * * * * *

In the measure under consideration the classification of cities is based upon a difference in population of only 6,500, and is, therefore, clearly within the rule above declared, unless there inheres in the subject matter thereof a reason natural and not artificial for the classification. As we have seen, the subject matter of the bill is the regulation of practice in certain courts of justice and of the punishment of crimes and misdemeanors. It is clear that there inheres in such subject matter no natural reason for the making of a classification of cities having no greater difference in population than that named. There inheres in the subject of the practice in courts of justice in cities under 36,500 no natural reason why such practice should be regulated by a different law in such cities than that which regulates the practice in similar courts in cities of over 43,000; nor does any natural reason inhere in the subject matter of regulating the practice in said courts in cities having a population between 36,500 and 43,000 for a different regulation of the practice in such courts than that which governs in either of the other classes named; nor is there any natural reason inherent in the subject of the punishment of crimes and misdemeanors upon which such classification can be based. The classification made by the bill is wholly arbitrary and artificial, and is based on no natural reason inherent in the subject matter thereof. It is true that arbitrary and artificial classifications may be made and local and special laws passed in reference to certain subjects not included in the seventeen inhibitions of Section 22 of Article 4, of the Constitution, and that when so made the courts cannot review the action of the Legislature. But the inhibitions in Section 22 are absolute, and as to them the reason for the classification must be a natural one and must inhere in the subject upon which such classification is based.

There can be no doubt of the local and special character of this bill. That fact is established, and may as well be admitted. To admit the local and special character of the bill, however, is to admit its invalidity, if we keep in mind the fact that its purpose is the regulation of the practice in certain courts of justice and of the punishment of crimes and misdemeanors in the city of Terre Haute.

The Constitution provides:

"The General Assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * *. For the punishment of crimes and misdemeanors; regulating the practice in courts of justice."

Section 22, Article 4, State Constitution.

I am thoroughly convinced that the provisions of the bill under consideration, making an arbitrary classification of cities based upon a difference of 6,500 in population, concerning a subject in which there is no natural and inherent reason for classification, make such measure local and special in character.

I am equally well convinced, providing as it does for the punishment of crimes and misdemeanors and for the regulation of the practice in courts of justice in the city of Terre Haute, that it is within the inhibition of Section 22, Article 4, of the Constitution.

APPROPRIATION OF PUBLIC MONEYS FOR PRIVATE PURPOSES.

February 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 39 without my approval.

This bill provides for the re-imbursement of certain ex-trustees of seven several townships in DeKalb County, out of the public funds of said respective townships, for certain sums of money respectively paid by them to their said several townships on account of township funds received by them, as trustees of their said respective townships, and deposited in certain banking institutions, which sums were lost to them through the failure of such institutions.

These sums range from $195 in one instance to $2,323-.97 in another, and amount in the aggregate to $6,961.30.

Other bills providing for the reimbursement of other public officials of DeKalb County for public moneys lost in like manner have received the sanction of the General Assembly. The aggregate appropriation of public funds belonging to the citizens of this county made by bills already passed exceeds $18,000.

Similar bills for the relief of certain other township and county officers of Steuben, Elkhart, Jasper, Laporte and Lagrange counties, on account of similar losses, have passed both houses of the General Assembly. The aggregate appropriations of funds of these several counties and the several townships thereof, made by the several measures already passed, are more than $65,000. This is a goodly sum to give away. And yet, as shown by the calendars of the respective houses of the General

Assembly, other measures having like provisions and like purposes are far on their way toward legislative approval. I am unable to state with accuracy the amount of the aggregate appropriations carried by these several pending bills, but the grand total of such appropriations made by these bills, passed and pending, is startling in amount, and is certainly sufficient to challenge the thoughtful consideration of every member of the General Assembly.

The character of this legislation, the number of public officials relieved of just and solemn obligation, and the great sum of money appropriated by it in the aggregate from the treasuries of the several townships and counties affected and placed in the pockets of private individuals as a gift, have caused me to consider with thoughtful care two questions which seem to me to go to the very heart of each of these measures.

First. Does sound public policy admit of such an appropriation of the public funds of a township or county?

Second. Is such legislation inhibited by the Constitution of the State?

I am compelled to answer the first of these questions in the negative. A public policy which relieves from liability a public official who makes a deposit of public funds entrusted to his care in a bank which fails, and in which failure such funds are lost to him, is unsound and dangerous. If such policy be generally adopted and long continued, it will inevitably beget loose and careless administration, multiply such losses and mulct the people daily by the use of public funds raised by taxation to recoup private losses.

Between each of the several trustees named as beneficiaries in the bill returned herewith and the people of their respective townships there was an implied contract,

a contract none the less binding and sacred because it was unwritten. On the one part this contract required each of said officers to discharge faithfully his duties as such official and account to his township for all moneys belonging to such township and coming into his hands. On the other side it required the people to pay him the salary fixed by law. Then, in addition, that the assurance on his part might not fail, the law required from him a solemn and binding written contract with surety that he would faithfully discharge his duties and account for all moneys belonging to his township which come into his hands. The amount of money received by him measured his liability. He was bound, as a public officer, to keep the funds in his hands safely. He was, in fact, an insurer of the safety of the funds in his hands and was bound to account for the moneys lost by him, though lost without his fault.

Good morals and a sound public policy require that these contracts, both the implied and the written one, shall be kept, and that there shall be no impairment of either of them, and that there shall be no relief from the penalties by them imposed.

When the beneficiaries named in this bill sought and obtained their respective offices they knew the obligation they would be required to assume. They knew, also, the hazards they would incur, and that the extent of their liability would be measured by the amount of money coming into their hands. Knowing this they were not deterred from accepting their several trusts. On the contrary, they chose to qualify and to enter upon the discharge of their respective duties.

Having entered upon the discharge of such duties, they were not compelled by any public necessity to withdraw in bulk the funds due their several townships from the county treasury. They could have left them

there until required for public use. While such funds were in the county treasury they, as township trustees, would have carried no hazard of their loss, nor would they have incurred any liability had they been lost while in such treasury. They chose to remove them in bulk and in larger sums than public necessity required and to place them on deposit in banks of their own choice. These banks failed. The loss of funds so deposited was their respective individual loss. The deposit of money in such banks was their affair and not the public's. Knowing the law, they chose to carry the hazard, to assume the risk and to accept the liability consequent upon loss, and now, that such loss has come upon them, they are in no position to ask relief from the requirements imposed upon them by the law. They have no claim, either moral, legal or equitable.

As to the second question,—the inhibition of the Constitution against such measures as these,—the law is too clear to admit of serious debate.

The decision of the Supreme Court in the case of Mount, trustee, vs. The State, ex rel. Richey, 90 Ind. 29, has been cited in support of the constitutionality of the bill by its friends and by the friends of the several kindred measures hereinbefore referred to. I have given consideration to that decision. It was written by a learned and eminent judge, in whose ability and learning I have very great confidence. The decision is in point and the bill is clearly within the rules there declared.

I am thoroughly convinced, however, that the decision is wrong in principle; that it is opposed to the great weight of judicial decision upon the question involved; that it rests upon a false premise, involving mixed questions of law and fact; and that it has been modified, if not overruled by implication, in a subsequent decision of the Supreme Court, and that it has ceased to be the

law. In fact, it never ought to have been the law.

The bill recites that the officials named therein have paid to their respective townships the several sums lost by them. Since doing that they have ceased to hold their respective offices. They occupy to their respective townships, as to the moneys lost and made good by them, the position neither of debtor nor creditor. They have no right in law or in equity to a return of their money. In the absence of special legislation for the purpose such money cannot be returned to them. A return of it would amount to nothing but a gift, pure and simple,—*a gift, too, of public money for a private purpose.*

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation to a private purpose is agreed by all authorities. This is conceded in the decision in the 90th Ind., above cited. On this point I submit the language of the decision:

"It is, perhaps, true that the Legislature cannot authorize the assessment of a tax for a mere private purpose * * * *."

The writer of the opinion states the basis of the decision as follows:

"Reimbursing a public officer for the loss of public funds, occurring while he is engaged in discharging public official duties, cannot be deemed an appropriation to private purposes."

This is the sole basis of the decision, and the pith and point of the decision itself is embraced in the following sentence:

"We do no more than decide that the Legislature has power to direct the application of township funds to the payment of claims growing out of the discharge of official duties by the trustee where the claims are of a public nature."

The premise stated above is a mistaken one. It involves two mixed conclusions of law and of fact, both of which are erroneous:

First. It assumes that the money was lost by the trustee "while engaged in discharging public official duties."

Second. It declares that an appropriation reimbursing a trustee for the loss of public funds "cannot be deemed an appropriation for a private purpose."

When the trustee drew the money from the treasury in bulk and before it was needed to meet the public expenses of his trust, and deposited it in a bank, he was not engaged in the discharge of any public official duty. No duty he owed to the public and no duty imposed upon him by law required him to withdraw the money from the county treasury in bulk before there was a necessity to pay it out for the public benefit, and deposit it in a bank. That act was a private act in which the public was not concerned. It was done either for his own convenience or profit.

If, having made this disposition of the money, he loses it through the failure of the bank, he is liable for the loss. His bond is also liable. He or his bondsmen must make it good. Knowing his liability and the liability of his bondsmen, he does make it good by restoring to the public fund the sum lost. This done, the transaction is closed. It never was at any time a public official act, but the private act of a public official, which was not required by law or by any duty he owed to the public. But whatever the act,—private or official,—the transaction is a closed incident. The township has lost nothing. The books are square. He has no claim. The township has no claim. He goes out of office with a clean account.

It is in that condition that we find him. While he is in that condition, it is proposed to do what? To appro-

priate public money to pay an obligation which the public owes to him? Not so. The public owes him no obligation, legal moral or equitable. But it is proposed to appropriate *public funds, raised by a tax upon the property owned by the people of the township, to make him a gift for his private and personal benefit*, the only basis of which is public sympathy for a private misfortune. To say that such an appropriation of public funds made under such circumstances is for a public and not a private purpose, is to distort a self-evident truth,—one so plain that there is room for neither cavil nor dispute.

The foundation upon which the decision is based, it will be observed, melts away under analysis and leaves no grain of fact or truth upon which it may rest, and the decision itself must therefore fall.

It will be remembered that in the language of the court itself the opinion does "no more than decide that the legislature has power to direct the application of township funds to the payment of claims *growing out of the discharge of official duties by the trustee, where the claims are of a public nature.*"

Neither the claim in the Mount case, supra, nor any of the claims now under consideration grew out of the discharge of official duties, nor was said claims nor are any of these of a public nature.

These considerations led the Supreme Court to correct the above decision, in the case of McClelland, trustee, vs. The State, ex rel. Speer, 138 Ind. 321, and to decide that the levying of taxes upon the property of a township to create a fund to reimburse a trustee for money lost under such circumstances, would be the taxing of the property of the citizens of the township for a private and not a public use.

In that case the court said:

"Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne Township to give the relator the sum of $2,812.90 and fastens upon a township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent nor contracted a liability. In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

It is urged that in the McClelland case, just cited, the question involved was different from the question involved in the Mount case, supra, in that the money lost by the trustee in the McClelland case was not raised by taxation upon the property of the people of the township whose property it was proposed to assess to create the fund with which to reimburse the trustee. In part that is true, but not wholly so. A part of the funds lost by him *were raised* by taxation upon the people of the township whose property the Legislature proposed to re-tax for the purpose of creating a fund with which to reimburse such trustee.

In deciding this branch of the case, the court declares the rule to be directly the opposite to the rule declared in the Mount case.

In passing upon the question of what is a public use, the court, in the McClelland case, aptly said:

"We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a State use or a national use in furtherance of a State use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a State or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

It is true that in the above case the act provided for the levy of a tax upon the property of the citizens of

the township from which to create a fund with which to reimburse the trustee, there being no funds in the township treasury out of which he could be reimbursed. We submit, however, that there is no distinction in principle between that case and the case involved in this bill. If the General Assembly has no power to legislate a tax upon the people of a township for a private purpose, it has no power to take the funds of a township which have been raised by a tax levied upon the property of the people of such township, and appropriate them to a private purpose. If the General Assembly is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation.

The levying of a tax, or the appropriation of money raised by taxation, for the reimbursing of the trustees named in this bill, would be, in effect, taking the property of one man to bestow it upon another. In effect, it would be a taking of the property of the citizens of the several townships affected, for a private and not a public use. It would be, in plain English, a robbery and a spoliation of the citizens of such townships for the benefit of the seven individuals named as beneficiaries in the bill,—a robbery and a spoliation for which no warrant can be found in the Constitution of the State, in law, in equity, or in the conscience of honest men.

That this bill is an attempt to make an appropriation of public funds for a private purpose, and, in effect, to take private property for private use, through the appropriation of public funds which have been raised by taxation, and that such an attempt is unconstitutional, is well established by judicial decision. In fact, there is almost an unbroken line of authority to that effect:

McClelland, etc. vs. The State, 138 Ind. 321;
State, etc. vs. Tappen, 29 Wis. 664;
People vs. Supervisor, etc., 16 Mich. 253;
Bristol vs. Johnson, 34 Mich. 123;
Hoagland vs. City of Sacremento, 52 Cal. 142;
Lowell vs. City of Boston, 111 Mass. 454;
Thorndyke vs. Inhabitants of Camden, 82 Me. 39;
Cooley on Constitutional Limitations, pp. 332-341.

On the other side, the case in 90 Ind., supra, stands practically alone. The premise upon which the decision rests, we have shown, is a mistaken one. It consists of a bare statement without a word of reasoning or the citation of a single authority to support it.

In the discussion of the power of the Legislature to make such an appropriation as was there sought to be made, the case of Brooks vs. Landsborough, 36 O. St. 227, is cited, but the citation is somewhat unfortunate, in that the Ohio Court, in its decision, was construing a law entirely different in principle from the one before the Indiana court. In the Ohio case the treasurer of a school district was robbed. He was unable to replace the money. The Legislature passed an act relieving his bondsmen and authorizing the district officers to levy a tax upon the property of the district to reimburse him, *after first submitting the matter to the vote of the electors of the district and receiving their approval.* It will be observed that the bondsmen were not relieved and that the tax was not levied by the act of the Ohio Legislature. It only provided a way by which the people of the school district might relieve the bondsmen and levy a tax.

That case, we submit, is slight authority for an act which levies a tax, or takes funds raised from a tax levy, for the reimbursement of public officials for money lost by them, without the consent of the citizens taxed.

In conclusion, I venture to express the hope that there

is not a member of the General Assembly who will be willing to sustain this measure and the kindred measures still pending before the Assembly, upon a careful consideration of the authorities cited, in view of the public policy involved, and his oath to support the Constitution of the State.

February 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 113 for the relief of George M. Wilcox, Samuel L. Luce, John Bill, Joseph Stewart and Charles M. Blue, ex-township trustees of certain townships in Jasper County, without my approval.

The bill provides for the reimbursement of certain ex-trustees of five several townships of Jasper County, out of the public funds of said several townships, for certain sums of money respectively deposited by them in a certain banking institution which sums were lost to them through the failure of said institution. These sums range from $673 in one instance to $2,929.14 in another, and amount in the aggregate to $7,939.54. The reasons for returning the bill without my signature are:

First. The measure is against public policy.

Second. It is unconstitutional.

My reasons are more fully set forth in a message accompanying House Bill No. 39 this day returned to you without my approval.

February 22, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 27, for the relief of

George W. Willennar, Treasurer of Steuben County, without my approval.

The bill provides for the reimbursement of said treasurer out of the public funds of said county for certain moneys paid by him to said county on account of county funds received by him and deposited in a certain banking institution, which moneys were lost to him through failure of said institution. My reasons for returning the bill without my signature are:

First. The measure is against public policy.

Second. It is unconstitutional.

I have more fully set out these reasons in a message accompanying House Bill No. 39 this day returned to you without my approval.

February 27, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 160 without my approval.

This bill provides for the reimbursement of Henry J. Hostettler, late trustee of Clear Spring Township, Lagrange County, out of the public funds of said township, for certain moneys of such township coming into his hands as such trustee, and by him deposited in a certain banking institution, which moneys were lost to him through the failure of such institution, and which amounted to the sum of $1,812.00.

Other bills providing for the reimbursement of other public officials of Lagrange County, for public moneys lost in like manner, have received the sanction of the General Assembly. The aggregate appropriation of public funds belonging to the citizens of this county made by bills already passed exceeds $3,400.00.

Similar bills for the relief of certain other township

and county officers of Elkhart, DeKalb, Laporte, Jasper and Steuben counties, on account of similar losses, have passed both houses of the General Assembly. The aggregate appropriations of the funds of these several counties and the several townships thereof, made by the several measures already passed, are more than $65,000. This is a goodly sum to give away. And yet, as shown by the calendars of the respective houses of the General Assembly, other measures having like provisions and like purposes are far on their way toward legislative approval.

I am unable to state with accuracy the amount of the aggregate appropriations carried by these several pending bills, but the grand total of such appropriations made by these bills, passed and pending, is startling in amount and is certainly sufficient to challenge the thoughtful consideration of every member of the General Assembly.

The character of this legislation, the number of public officials relieved of just and solemn obligation, and the great sum of money appropriated by it in the aggregate from the treasuries of the several townships and counties affected and placed in the pockets of private individuals as a gift, have caused me to consider with thoughtful care two questions which seem to me to go to the very heart of each of these measures.

First. Does sound public policy admit of such an appropriation of the public funds of a township or county?

Second. Is such legislation inhibited by the Constitution of the State?

I am compelled to answer the first of these questions in the negative. A public policy which relieves from liability a public official who makes a deposit of public funds entrusted to his care in a bank which fails, and in which failure such funds are lost to him, is unsound

and dangerous. If such policy be generally adopted and long continued, it will inevitably beget loose and careless administration, multiply such losses and mulct the people daily by the use of public funds raised by taxation to recoup private losses.

Between the trustee named as the beneficiary in the bill returned herewith and the people of his township there was an implied contract; a contract none the less binding and sacred because it was unwritten. On his part this contract required him to discharge faithfully his duties as such official and account to his township for all moneys belonging to such township and coming into his hands. On the people's part it required them to pay him the salary fixed by law. Then, in addition, that the assurance on the part of the trustee might not fail, the law required from him a solemn and binding written contract with surety that he would faithfully discharge his duties and account for all moneys belonging to his township which should come into his hands. The amount of money received by him measured his liability. He was bound, as a public officer, to keep the funds safe in his hands. He was, in fact, an insurer of the safety of the funds in his hands and was bound to account for the moneys lost by him, though lost without his fault.

Good morals and a sound public policy require that these contracts, both the implied and the written one, shall be kept, and that there shall be no impairment of either of them, and that there shall be no relief from the penalties by them imposed.

When the beneficiary named in this bill sought and obtained his office he knew the obligation he would be required to assume. He knew, also, the hazards he would incur, and that the extent of his liability would be measured by the amount of money coming into his

hands. Knowing this he was not deterred from accepting his trust. On the contrary, he chose to qualify and to enter upon the discharge of his duties as such trustee. Having entered upon the discharge of such duties, he was not compelled by any public necessity to withdraw in bulk the funds due his township from the county treasury. He could have left them there until required for public use. While such funds were in the county treasury he, as township trustee, would have carried no hazard of their loss, nor would he have incurred any liability had they been lost while in such treasury. He chose to remove them in bulk and in larger sums than public necessity required and to place them on deposit in a bank of his own choice. The bank failed. The loss of funds so deposited was his individual loss. The deposit of such funds in such bank was his affair and not the public's. Knowing the law, he chose to carry the hazard, to assume the risk and to accept any liability consequent upon the loss of any part of such funds, and now that such loss has come upon him he is in no position to ask relief from the requirements imposed upon him by the law. He has no moral, legal or equitable claim.

As to the second question,—the inhibition of the Constitution against such measures as these,—the law is too clear to admit of serious debate.

The decision of the Supreme Court in the case of Mount, trustee, v. The State, ex rel. Richey, 90 Ind. 29, has been cited in support of the constitutionality of the bill by its friends and by the friends of the several kindred measures hereinbefore referred to. I have given consideration to that decision. It was written by a learned and eminent judge, in whose ability and learning I have very great confidence. The decision is in point and the bill is clearly within the rules therein declared,

in so far as it seeks to reimburse the beneficiary on account of public funds lost by him, but it is not in point and the provisions of the bill are not within the rules of the decision in the case named in so far as it seeks, by direct provision, to relieve such beneficiary and the sureties on his official bond and discharge them from any and all liability on account of such bond for the payment of the money due the said township from such beneficiary.

I am thoroughly convinced, however, that the decision is wrong in principle; that it is opposed to the great weight of judicial decision upon the question involved; that it rests upon a false premise, involving mixed questions of law and fact; and that it has been modified, if not overruled by implication, in a subsequent decision of the Supreme Court, and that it has ceased to be the law. And I am quite as thoroughly persuaded that it never ought to have been the law.

The bill is silent upon the question as to whether or not the trustee sought to be relieved has paid to his township the money lost by him. If he has paid the township the money lost, he occupies to his township, as to such money, the position neither of debtor nor creditor. He has no right in law or in equity to the return of his money. In the absence of special legislation for the purpose such money cannot be returned to him. A return of it would amount to nothing but a gift, pure and simple,—*a gift, too, of public money for a private purpose.*

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation to a private purpose is agreed by all authorities. This is conceded in the decision in the 90th Ind., above cited. On this point I submit the language of the decision:

"It is, perhaps, true that the Legislature cannot authorize the assessment of a tax for a mere private purpose * * * * *"

The writer of the opinion states the basis of the decision as follows:

"Reimbursing a public officer for the loss of public funds, occurring while he is engaged in discharging public official duties, cannot be deemed an appropriation to private purposes."

This is the sole basis of the decision, and the pith and point of the decision itself is embraced in the following sentence:

"We do no more than decide that the Legislature has power to direct the application of township funds to the payment of claims growing out of the discharge of official duties by the trustee where the claims are of a public nature."

The premise stated above is a mistaken one. It involves two mixed questions of law and fact, both of which are erroneous:

First. It assumes that the money was lost by the trustee "while engaged in discharging public official duties."

Second. It declares that an appropriation reimbursing a trustee for the loss of public funds "cannot be deemed an appropriation for a private purpose."

When the trustee drew the money from the treasury in bulk and before it was needed to meet the public expenses of his trust, and deposited it in a bank, he was not engaged in the discharge of any public official duty. No duty he owed to the public nor any duty imposed upon him by law required him to withdraw the money from the county treasury in bulk and deposit it in a bank before there was a necessity to pay it out for the public benefit. That act was a private act in which the

public was not concerned. It was done either for his own convenience or profit.

If, having made this disposition of the money, he loses it through the failure of the bank, he is liable for the loss. His bond is also liable. He or his bondsmen must make it good. Knowing his liability and the liability of his bondsmen, he does make it good by restoring to the public fund the sum lost. This done, the transaction is closed. It never was at any time a public official act, but the private act of a public official, which was not required by law nor by any duty he owed to the public. But whatever the act,—private or official,—the transaction is a closed incident. The township has lost nothing. The books are square. He has no claim. The township has no claim. He goes out of office with a clean account.

It is in that condition that we find him. While he is in that condition it is proposed to do what? To appropriate public money to pay an obligation which the public owes to him? Not so. The public owes him no obligation, legal, moral or equitable. But it is proposed to appropriate *public funds, raised by a tax upon the property owned by the people of the township, to make him a gift for his private and personal benefit*, the only basis of which is public sympathy for a private misfortune. To say that such an appropriation of public funds made under such circumstances is for a public and not a private purpose, is to distort a self-evident truth,—one so plain that there is room for neither cavil nor dispute.

The foundation upon which the decision is based, it will be observed, melts away under analysis and leaves no grain of fact or truth upon which it may rest, and the decision itself must therefore fall.

It will be remembered that in the language of the

court itself the opinion does "no more than decide that the legislature has power to direct the application of township funds to the payment of claims *growing out of the discharge of official duties by the trustee, where the claims are of a public nature.*"

Neither the claim in the Mount case, supra, nor the claim now under consideration grew out of the discharge of official duties, nor was the Mount claim, nor is this, of a public nature.

These considerations led the Supreme Court to correct the above decision, in the case of McClelland, trustee, v. The State, ex rel. Speer, 138 Ind. 321, and to decide that the levying of taxes upon the property of a township to create a fund to reimburse a trustee for money lost under such circumstances would be the taxing of the property of the citizens of the township for a private and not a public use.

In that case the court said:

> "Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne Township to give the relator the sum of $2,812.90 and fastens upon a township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent nor contracted a liability. In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

It is urged that in the McClelland case, just cited, the question involved was different from the question involved in the Mount case, supra, in that the money lost by the trustee in the Mclelland case was not raised by taxation upon the property of the people of the township whose property it was proposed to assess to create a fund with which to reimburse the trustee. In part that is true, but not wholly so. A part of the funds lost by him *were raised* by taxation upon the people of the

township whose property the legislature proposed to retax for the purpose of creating a fund with which to reimburse such trustee.

In passing upon the question of what is a public use, the court, in the McClelland case, aptly said:

> "We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a State use or a national use in furtherance of a State use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a State or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

It is true that in the above case the act provided for the levy of a tax upon the property of the citizens of the township from which to create a fund with which to reimburse the trustee, there being no funds in the township treasury out of which he could be reimbursed. We submit, however, that there is no distinction in principle between that case and the case involved in this bill. If the General Assembly has no power to legislate a tax upon the people of a township for a private purpose, it has no power to take the funds of a township, which have been raised by a tax levied upon the property of the people of such township, and appropriate them to a private purpose. If the General Assembly is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation.

The levying of a tax, or the appropriation of money raised by taxation, for the reimbursing of the trustee named in this bill, would be, in effect, taking the property of one man to bestow it upon another. In effect, it would be a taking of the property of the citizens of the township affected for a private and not a public use. It

would be, in plain English, a robbery and a spoliation of the citizens of the township for the benefit of the individual named as the beneficiary in the bill,—a robbery and a spoliation for which no warrant can be found in the Constitution of the State, in law, in equity, or in the conscience of honest men.

The bill under consideration provides specifically for the levying of a tax for the creation of a fund to recoup the township for the money appropriated by it for the reimbursement of the trustee.

That it is an attempt to make an appropriation of public funds for a private purpose, and, in effect, to take private property for private use, through the appropriation of public funds which have been raised by taxation, and that such an attempt is unconstitutional, is well established by judicial decision. In fact, there is almost an unbroken line of authority to that effect:

McClelland, etc. v. The State, 138 Ind. 321;
State, etc. v. Tappen, 29 Wis. 664;
People v. Supervisor, etc., 16 Mich. 253;
Bristol v. Johnson, 34 Mich. 123;
Hoagland v. City of Sacramento, 52 Cal. 142;
Lowell v. City of Boston, 111 Mass. 454;
Thorndyke v. Inhabitants of Camden, 82 Me. 39;
Cooley on Constitutional Limitations, pp. 332-341.

On the other side, the case in 90 Ind., supra, stands practically alone. The premise upon which the decision rests, as we have shown, is a mistaken one. It consists of a bare statement without a word of reasoning or the citation of a single authority to support it.

In the discussion of the power of the legislature to make such an appropriation as was there sought to be made, the case of Brooks v. Landsborough, 36 O. St. 227, is cited, but the citation is somewhat unfortunate, in that the Ohio court, in its decision, was construing a

law entirely different in principle from the one before the Indiana court. In the Ohio case the treasurer of a school district was robbed. He was unable to replace the money. The legislature passed an act relieving his bondsmen and authorizing the district officers to levy a tax upon the property of the district to reimburse him, *after first submitting the matter to the vote of the electors of the district and receiving their approval.* It will be observed that the bondsmen were not relieved and that the tax was not levied by the act of the Ohio Legislature. It only provided a way by which the people of the school district might relieve the bondsmen and levy a tax.

That case, we submit, is slight authority for an act which levies a tax, or takes funds raised from a tax levy, for the reimbursement of public officials for money lost by them, and does so without the consent of the citizens taxed.

There is yet another reason, as before indicated, why the bill returned herewith is unconstitutional, and which takes it clearly outside of the rule laid down by the court in the case of Mount v. State, supra. It provides

"That the said Henry J. Hostettler and the sureties on his bond as trustee shall be released and discharged from any and all liability for the payment of the money of said township so lost."

This provision is clearly within the Constitutional inhibition contained in Section 24 of the Bill of Rights, which provides that

"No * * * law impairing the obligation of contracts shall be passed."

It is also in direct conflict with the decisions of the Supreme Court of the State.

The case of Johnson v. The Board of Commissioners of Randolph County, reported in the 140 Ind. 152, is directly in point. The decision there rendered has never been criticised, modified or overruled, so far as I have been able to ascertain. The above case involved the validity of a statute which sought to relieve a county treasurer and his bondsmen from liability on account of the official bond of the treasurer for money belonging to his county and lost by him.

The language of the statute seeking to relieve the official and his bondsmen from liability on his official bond, is substantially the same as the language used in the present bill.

In speaking to the question of the constitutionality of the statute, the court said:

"The act could not have been any more violative of the Constitution, both State and Federal, if it had provided that the obligation of the bond be, and the same is, hereby abrogated and annulled. Because, if the Legislature can release a party from a part of the obligation of his contract, it can release him from all of it. Both Constitutions forbid the Legislature to pass a law impairing the obligation of contracts * * * *

"We, therefore, hold that the act referred to was and is void because it violates the constitutional provisions above referred to."

Because of the considerations named above, I have been unable to give my approval to this measure, and I venture to express the hope that there is not a member of the General Assembly who will be willing to sustain the bill and the kindred measures still pending before the General Assembly, upon a careful consideration of the authorities cited, in view of the public policy in-

volved, and his oath to support the Constitution of the State.

February 27, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith, without my approval, Senate Bill No. 174, for the relief of William Watters, Treasurer of Lagrange County.

The bill provides that

"Said Watters and his sureties are hereby released and discharged from any and all liability for the loss of said money."

This language refers to the loss of certain public moneys coming into the hands of said Watters as treasurer of said county, and by him deposited in a certain bank, and lost through the failure of such bank.

The bill also provides for the levying of a tax for the creation of a fund from which to recoup said county for said treasurer.

I withhold my approval from the bill for the following reasons:

First. It is against public policy.

Second. It is unconstitutional.

My reasons for my action are more fully set forth in the message accompanying Senate Bill No. 160, this day returned to the Senate without my approval.

March 10, 1905.

Mr. President and Gentlemen of the Senate of the Sixty-fifth General Assembly of the State of Indiana:

I deposit herewith Senate Bill No. 306 with the Secretary of State without my approval, pursuant to the

provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill appropriates $500 for such printing and stationery as may be required by the "Assistant Adjutant-General and Assistant Quartermaster-General of the Department of Indiana, Grand Army of the Republic," to be procured through the Commissioners of Public Printing, of the State Printer, to be paid out on vouchers approved by said Commission and said officers.

This seems to me to be a most extraordinary appropriation of public funds. It is one to which I have given much consideration, for I have been impelled by sympathy and gratitude to give it my approval, but I am unable to do so.

I have the highest possible regard and esteem,—amounting almost to veneration,—for the men who constitute the Grand Army of the Republic. The story of their services and valor is linked forever with the history of the Nation's life. The debt the present generation owes them can never be fully paid. Of this I am keenly conscious. The memory of what they did and what they wrought in behalf of constitutional government makes it hard for me to do my duty in this matter. It would be far easier for me to sign the bill and allow it to become a law, than to withhold executive approval from it. And I would do so were I not convinced that by so doing I would betray my trust, set a dangerous precedent and do an unconstitutional thing. These considerations, and these alone, prevent my signing it. Neither sympathy nor grateful remembrance can justify one in my position for the doing of an act unwarranted by the law of the land which, with uplifted hand, he has sworn to support.

The Grand Army of the Republic, however noble its

purpose and splendid its services, under the law of the State, has no official relation to the State. It performs no service for the State, which can be recognized by the appropriation of public funds for its benefit. It serves the State, and serves it greatly, by keeping alive the memories of the sacrifice and devotion made by its members in behalf of the land in which we live and in defense of the flag we love, and by planting in the hearts and inculcating in the minds of the children who are to be the men and women of tomorrow a reverence for lofty devotion and the lessons of patriotism; and by maintaining the general observance of the most sacred day in the national calendar,—Memorial Day; but these are services for which, under the law of the land, no money compensation can be made out of the public funds.

Every church, every social, benevolent, or fraternal, or civic order, in greater or less degree serves the State in the same way. There is no more warrant in law for the appropriation of public funds to defray the expenses of the officers of the State Department of the Grand Army of the Republic, than there is for the appropriation of public funds to meet the expenses of the annual conferences of the several churches of the State, or of the officers of the grand lodges of the various civic orders of the State, such as the Knights of Pythias, the Independent Order of Odd Fellows, or the various Masonic bodies.

It has been suggested to me that the appropriation is small,—only $500.00. But the precedent, if I were to sign the bill, would be far-reaching and lasting in its effect. A bad precedent founded upon a small appropriation is as dangerous and far-reaching as though founded upon a large appropriation. Such a precedent as this, if established, might be considered a warrant for

an appropriation of public funds for the payment of all the expenses of the State Department of the Grand Army of the Republic, including the salaries of its officers. The power to do the one implies the power to do the other, and the policy of the one necessarily includes the policy of the other.

It suggests a door that must not be opened. It is against public policy. It is also against the best interests of the Grand Army of the Republic. That organization will hold a higher place in the hearts and affections of the people if it does not become the recipient of public funds appropriated in defiance of the Constitution of the State. Its members fought on many fields to preserve the Constitution not only of the national government, but of the State as well, and they ought not now to ask either the Legislature or the Chief Executive of the State to violate that Constitution.

What I have said implies the unconstitutionality of the measure. That it is unconstitutional is so clear to me that no doubt remains. The appropriation is an appropriation of public funds for the use of private persons. It may be said that the Assistant Adjutant-General and the Assistant Quartermaster-General of the Department of Indiana of the Grand Army of the Republic are not private persons, but officers of the civic order to which they belong. That, however, is not an accurate statement. Under the law, they are private persons. They are not officials of the State. They have no official connection with the State. In contemplation of law they serve the State in no way. Whatever positions they may hold in the order named, they are simply private citizens in law. The order to which they belong is not a department of the State Government; but, on the contrary, it is a civic order, private in character.

I have recently had occasion to veto certain measures passed by the General Assembly, appropriating money of the people,—public funds,—for the purpose of reimbursing certain public officers for moneys of the public lost by them, on the ground that such appropriations were for the use of private persons, and beyond the purposes of taxation contemplated by the Constitution.

That the General Assembly has no constitutional power to make an appropriation of public funds raised by taxation for a private purpose, or for the use of a private individual, is agreed by all the authorities.

In the case of McClelland, trustee, v. The State, ex rel. Speer, 138 Ind. 321, it was held that the levying of taxes upon the property of a township to create a fund for a private and not a public use, was without the Constitution. In that case the court said:

"Here was an unconstitutional discrimination between citizens, in this, that the act arbitrarily requires the taxpayers of Wayne Township to give to the relator the sum of $2,812.90 and fastens upon the township and its taxpayers a debt for that amount, for which the township never received anything and for which it never gave its consent nor contracted a liability. In our opinion the General Assembly is not vested with power to legislate a tax upon the people of a township for a private purpose."

In passing upon the question of what is a public use, the court in the above case aptly said:

"We think the law is well settled that nothing can fairly be regarded as a public use, unless it has a State use or a national use in furtherance of a State use. To defray the necessary expenses of a township, or to make necessary improvements in a township, is a State or public use. But the donation of a large sum of money to the relator in this case cannot be regarded as a public use of money."

The word "tax" of itself implies a public purpose. Properly defined, it is:

"An enforced proportional contribution levied on persons, property or income, either (a) by the authority of the State for the support of the government and for all its public or governmental needs, or (b) by local authorities for general municipal purposes."

This definition furnishes no room or shelter for an appropriation of public funds for the use of any person or organization that has no claim upon the State, or to whom no legal obligation is due.

A public statute cannot be valid which is intended so to tax an individual, and does in effect, as to take his property for private use. Such an appropriation is a gift, pure and simple. To warrant taxation the purpose must not only be beneficial, but it must concern the public. A merely private benefit is not enough. Under a free government, when no public considerations are involved, every man must be allowed to choose for himself when it comes to the giving of money. As already suggested, taxation, by the very meaning of the term, implies the raising of money for public use and excludes the raising of it for private objects and purposes. The acquisition, possession and protection of property are among the chief ends of government. To take, directly or indirectly, the property of individuals to give to others, is to withdraw it from the protection of the Constitution and submit it to the will of an irresponsible majority.

It is true that the bill does not contemplate the levy of a tax upon the property of the citizens of the State, from which to create a fund with which to meet the appropriation it makes. But there is no distinction in principle between the appropriation of public funds already raised by taxation and the laying of a tax for creation of a fund for such an appropriation. If the General Assembly has no power to legislate a tax upon

the people of the State for a private purpose, it has no power to take the funds of the State, which have been raised by a tax levied upon the people of the State, and appropriate them to a private purpose. If it is inhibited from laying a tax for a private purpose, it must necessarily be inhibited, on like principle and for like reasons, from appropriating for a private purpose the money which has been raised by taxation. In either case it is taking the property of one man to bestow it upon another, and this is clearly within the constitutional inhibition that no man's property shall be taken without due process of law.

Impairment of Securities held by Surety Companies.

March 10, 1905.

Mr. President and Gentlemen of the Senate of the Sixty-fifth General Assembly of the State of Indiana:

I deposit herewith Senate Bill No. 214 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill extends, by amendment, the provisions of the act of March 2, 1901, concerning surety companies and the securities in which they may invest their funds. The extension includes in such securities: "Bonds or other evidences of indebtedness, bearing interest, of any county, incorporated city, town, township or school district, or street improvement, sewer, drainage or gravel road bonds, or municipal improvement bonds, in any such State, (where it is doing business,) when such bonds or other evidence of indebtedness are issued by authority of law, and on which interest has not been defaulted."

This would materially change the character of the

investment of surety companies, and open wide the door to the investment of the funds of such companies in cheap, doubtful and uncertain securities issued by small municipalities of distant States, or by the townships and school districts thereof. It would make it possible for such companies to invest in such securities as soon as issued and before there could be a default in the payment of interest. As to the class of securities named in the above quotation, there is not even a requirement that they shall have a current value of not less than par at the time when such investment is made. Such restriction is made in the law as to much more valuable and stable securities, but it seems to have been carefully excluded as to these. Under the law of this State, surety companies are taken as surety on all kinds of official bond, or upon bonds of any person acting in a fiduciary capacity. The value of the bond upon which such company becomes surety depends in each instance wholly upon the character and value of the securities in which the funds of such companies are invested, and the law ought not to give opportunity for uncertain and questionable investments of their capital. It may be true that such companies are too closely limited as to the securities in which they may invest under the present statute, but by the provisions of the bill under consideration practically all limitation is removed as to investments that may be made by them.

I am convinced that a due regard for the interests of the public, who deal with surety companies, requires that the law remain as it is, rather than become what it would be if this measure were the law. That the law shall remain as it is, I know is safe so far as the public interests are concerned. If it were changed, as suggested, I would have grave doubts as to the safety of such interests. I am fully persuaded that the evidence of

the indebtedness of a school district in a distant State is not the character of security in which the funds of such companies should be invested. Nor are street improvement or sewer bonds of small municipalities in such States safe securities. For these reasons I decline to give my approval to the measure.

Unfair Local Assessments.

March 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 362 without my approval.

The bill authorizes the common council of cities not operating under a special charter and the board of trustees of towns, where cities and towns own their own system of water works, to order the extension of the water mains of such water works system and the laying of house connections thereto along, in and upon such streets as such council or such board of trustees may from time to time deem necessary, and provides that the cost of constructing and laying such water mains and the house connections thereto shall be assessed upon the property abutting upon the streets where said water mains are laid, in proportion to the benefits derived therefrom.

These provisions are so unfair and unjust to the citizens and taxpayers of such cities and towns living upon streets where such water mains may be laid, as to preclude executive approval.

Every water works system owned by any city or town in the State has been purchased or constructed at the expense of all the tax payers in the city or town owning

the same. Property owners living upon streets where no water mains are now located have contributed as much to the payment of the cost of constructing or purchasing such water works system, in proportion to the value of the property owned by them, as have any of the other citizens of such town or city. They have the same right to water privileges that such other citizens may have and upon the same terms. The bill under consideration ignores that right entirely, and vests the arbitrary power in the common council of a city or the board of trustees of a town to construct and lay such water mains upon any such street and to assess the entire cost thereof against such property owners without their consent and against their wishes. If such water mains are constructed and laid upon such streets, and the property owners thereon are compelled to pay special assessments to defray the expense of constructing and laying the same, they will be compelled to contribute in an unequal and unjust degree to the cost of maintenance of a system of water works which belongs to the whole people. Such system should be established from a fund derived from a uniform rate of taxation resting alike upon all citizens of the city or town, and not in part from a fund to which all citizens have contributed alike according to the value of the property owned by them, and in part from a special assessment resting upon a few of such taxpayers. The burden of the cost of constructing and maintaining such system rests unfairly upon the citizens whose property is especially assessed, to the extent of the special assessment laid. This I think ought not to be.

The power to construct and lay water mains upon any of the streets of any of such cities or towns, is an arbitrary power under the provisions of this measure, vested wholly in the discretion of the common council or the board of

trustees of such city or town. The proceeding to construct and lay such water mains upon any such street is not required to be initiated by any persons owning property thereon. They have no choice in the premises. The improvement may be made against their wish and over their protest. It is theirs only to pay the unequal burden imposed.

Lack of Uniformity in Rate of Assessment of Taxes.

March 6, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 174 without my approval.

The bill provides for the extension of library privileges to counties and townships in which free public libraries may be located, upon the filing of notice by the managing board of any such library with the board of county commissioners of such county, or with the advisory board of any such township, as the case may be, and upon the acceptance by such respective boards of the conditions named in such notice, and the appropriation, out of the general fund of such county or township, of a sum equal to the fund which will be produced by a certain named rate of taxes upon the taxable property of said county or township, as the case may be, outside of such city where said library may be located, and in case of the county, outside of the limits of any township in the county then maintaining a free public library by a tax under existing laws.

Under the provisions of the bill all property within the limits of any city in such township where such library

is located, is omitted from the tax levy required to be made by such township.

In case of the county, all property located within the limits of such city or within the limits of any township in which a free library is maintained by taxation, is omitted from the tax levy required to be made by the county.

In other words, the bill provides for the laying of a township tax for library purposes that is not uniform throughout the township, and from which certain property in certain portions of the township, that is, property within such city where such library is located, is exempt.

It also provides for the levying of a county tax for library purposes that is not uniform throughout the county, and from which property within such incorporated city where such library is situated, or within any township in such county which is maintaining a library by taxation, is exempt.

The taxing district of a township, for the purpose of laying a township tax, is the entire township. Any such tax so laid by such township must be laid upon all the property of the township.

The taxing district of a county, for the purpose of laying a county tax, is the entire county. It includes all townships and all cities within the borders of the county. Such a tax laid by such county must be laid upon all the property of the county.

Such a tax as the one authorized by the provisions of the measure under consideration, cannot be laid either by the township or the county.

The Constitution of the State, Article 10, Section 1, provides:

"The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation; * * * *."

The above provision has received judicial construction, and its meaning relative to the question now under consideration is well-established.

In an early and well-considered case, it is said, in reference to this section:

"The section does not require that the rate of assessment shall be uniform and equal for all purposes throughout the State; and we think its meaning clearly is, that the rate of assessment and taxation must be uniform and equal throughout the locality in which the tax is levied. If the levy is for State purposes, then the rate must be uniform and equal in all parts of the State; and if the levy be for county purposes, the rate must be uniform and equal throughout the county in which the levy is made; and so in townships, when the levy is for township or road purposes. It was simply intended that the uniformity and equality of rate should be co-extensive with the territory to which the tax applies. Taxes are public burdens, which should be borne by all, and it was evidently the object of the convention, in the adoption of this and other provisions of the Constitution, to devise a system for the assessment and levy of taxes that would distribute these burdens, among those liable to them, upon principles of uniformity, equality and justice. To this end the primary principle adopted is, that taxes shall be assessed on the property liable thereto according to its just value and by uniform and equal rate."

Bright v. McCullough, 27 Ind. 230.

In the course of the opinion in the above case the court quotes with approval the following from the opinion by Rainey, C. J., in the case of City of Zanesville v. Richards, 5 Ohio St. 589:

"Without express authority of law, no tax, either for State, county, township or corporation purposes, can be levied; and we see no reason to doubt that this section of the Constitution is equally applicable to, and furnishes the governing principles for, all laws authorizing taxes to be levied for either purpose.

The great object of the provision was to secure equality and uniformity in the imposition of these public burdens. The Convention was well aware that much the largest part would be required to answer the purpose of these local sub-divisions, and equally aware that it could only be levied as the General Assembly should provide. In establishing this principle of justice and equality, they have made it the fundamental rule upon which all such laws must be based; and its spirit and purpose can only be preserved by holding that it requires a uniform rate per cent to be levied upon all property according to its true value in money, within the limits of the local sub-division for which the revenue is collected."

Again, it is said in the case of Bright v. McCullough, supra, in quoting from the opinion in the case of Exchange Bank of Columbus v. Hines, 3 Ohio St. 1:

"Uniformity in taxing implies equality in the burden of taxation and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform over all the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable."

The case of Bright v. McCullough, supra, has never to my knowledge been overruled, criticised or modified, but has been many times cited with approval by the Supreme Court of this State.

Henderson v London, etc. Co., 135 Ind. 37;
Cleveland, etc. Co. v. Backus, 133 Ind. 535;
Pittsburg, etc. Co. v. Backus, 133 Ind. 647.

In the first of these cases the principle here under consideration is expressed in the following language:

"The taxing district of the State, wherein taxes are directed for the benefit of those serving the State, is the whole State. State taxes are not of uniform and equal rate when they apply

to a portion of a class only and omit a portion of the same class, and this is no less true because the classes may be divided by county lines."

In the case last cited, the following declaration is made:

"There is uniformity and equality of assessment and taxation when all the property is to be assessed at its true cash value, and the same rate is fixed on all property subject to assessment for the tax. If it be a tax for State purposes, the rate must be the same throughout the State; if for county purposes or township purposes, the same rule would apply."

The tax authorized to be levied by the county under the provisions of the measure returned herewith, is a county tax for library purposes, and the tax authorized thereby to be levied by the township, is a township tax for library purposes. The taxes paid under the county levy go into the general fund of the county, and those paid under the township levy go into the general fund of the township, and the sums paid to the library, for the maintenance of which such tax is levied, are required to be paid from the general fund of the county or of the township, as the case may be.

It has been said that the reason why the property in the city where the library is located is exempt from taxation by the county, is found in the fact that the common council of such city, under existing law, may levy a tax for the maintenance of such library upon the property within the city limits. It is also urged that a township that has within its borders a free library which it is maintaining by a tax levy upon the property of such township, ought to be exempt from the payment of the tax levied for the maintenance of a library by the county in which such township is located. It is further said that neither the property in such city nor the property in such township is in fact exempt from taxa-

tion for library purposes. This argument, however true it may be in fact, does not meet the constitutional objection. The city tax is laid by a different authority and is different in rate from the county tax, and the same is true of the township tax. In neither case would there be uniformity of rate.

I am in sympathy with the purpose sought to be effected by the provisions of the bill under consideration, but it is so clearly within the constitutional inhibition requiring a uniform rate of taxation that I am compelled to refuse it executive approval.

Deprivation of Property without Due Process of Law.

March 4, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 186 without my approval.

The bill, in special terms, declares that all sales or transfers in bulk of the whole or any part of a stock of merchandise, otherwise than in the ordinary course of trade and in the usual course of the seller's business, shall be void as against the creditors of the seller, unless, at least five days before such sale or transfer, the purchaser shall demand and receive from such seller a full detailed inventory, showing the quantity and so far as possible, with the exercise of reasonable diligence, the fair wholesale value of each article to be included in such sale or transfer; and unless the purchaser shall further demand and receive from the seller a written statement under oath, of the names and addresses of all creditors of the seller, with the amount of indebtedness owing to each, or, if there be no creditor, a written

statement to that effect, and unless the purchaser or seller shall, at least five days before the taking possession of the merchandise and articles included in such sale or transfer, notify personally, or by telegram, or by registered mail, every creditor whose name and address is included in said statement, of the proposed purchase, sale or transfer.

The purpose of the bill, no doubt, is to prevent fraudulent sales by merchants and to secure the equal distribution of the property of insolvent merchants,—a purpose which I concede is a proper and legitimate one. But it is not confined to insolvent persons. Unfortunately, it is so framed as to include all merchants who may be in any manner indebted to any one. It is not directed at fraudulent sellers or at sales by insolvent merchants. There is no question but what the Legislature has ample power to declare fraudulent sales void, and to pass proper enactments for the just distribution of the property of insolvents. But it is equally clear that it possesses no power, under the Constitution, to declare fraudulent and void a transaction that is not as a matter of fact tainted with fraud. It is not within the power of the Legislature, by the use of an epithet, to change an innocent transaction into a vicious one; nor can it destroy the rights of solvent debtors in endeavors to equitably distribute the assets of insolvents. There must be some public reason existing to justify the invasion by the Legislature of the inalienable and ancient rights of citizens. No public reason can be offered why an honest and solvent merchant shall be trammeled and restricted in his power to sell and dispose of his goods simply because he may be indebted to some extent.

In a recent and well-considered Ohio case it is said:

"While it is not required that every act which restricts the

enjoyment of property must affect every member of society, it is required that every such act must be founded upon a reason of public nature, and the act must affect all who are within the reason of its enactment. * * * *.

For every restriction upon the enjoyment and use of property there must be some substantial reason of a public character * * * *. If a restriction is placed upon the alienation of property, it must be for the benefit of either the entire body of the people, or at least of all who are within the reason of the restriction."

Glos v. Mulchay, 71 N. E. —630.

In another very recent decision, remarkable for the force, accuracy and cogency of its reasoning, for the care with which it was considered and the learning and research it displays, it is said of an act similar to the one here under consideration, in speaking of the police power of the State, under the authority of which the validity of the act was sought to be maintained:

"The power may be exercised to promote the safety, health, comfort and welfare of society, and to sustain legislation as a proper exercise of the police power it must have reference to some such end * * *.

"The enactment in controversy does not appear to have reference to either of the objects here indicated. It can hardly be said that a law which prevents a person, though indebted, who is substantially able to pay his debts, from selling his property in the same way his neighbors do, and in accordance with the time-honored custom or usage, either promotes the safety, health, comfort or welfare of the community or the State.

"If the act referred generally to insolvent debtors it would present a different question, but it relates simply to debtors and creditors of debtors of a particular and specified business whether solvent or insolvent; so that the merchant who is worth a fortune over and above his indebtedness, and who is able to respond instantly to his creditors, who may be only such because of convenience in trade and business transactions, nevertheless finds himself, under the provisions of this act, deprived of the liberty to sell his goods, or to contract in relation thereto in the

same manner that others engaged in the same business may lawfully do."

Sol Block & Gieff v. Schwarts, 27 Utah, 402.

In a dissenting opinion filed in a Tennessee case hereinafter referred to, the reasoning of which is much stronger than that of the principal opinion, it is said of a similar statute:

"No good reason can be given why merchants should be trammeled and restricted in the sale of their goods, when farmers, traders, manufacturers and other dealers have the unrestricted right to sell when they please, provided it is done in good faith.

"Nor is there any good reason why such a sale should, in the case of a merchant, be presumed to be fraudulent, when in the case of other dealers the presumption is in favor of good faith, and proof is required to show fraud. Nor is there any good reason to restrict the merchant who is solvent from making sale of his goods, as he may deem advisable, in order to prevent the insolvent merchant from exercising the same option and privilege."

Neas v. Borches, 109 Tenn. 405.

In an able and well-considered case decided by our own Supreme Court, the following quotation from Judge Cooley on Constitutional Limitations is cited with approval:

"The doubt might also arise whether a regulation made for any one class of citizens, entirely arbitrary in its character, and restricting their rights, privileges or legal capacity in a manner before unknown to the law, could be sustained, notwithstanding its generality. Distinctions in these respects must rest upon some reason upon which they can be defended,—like the one of incapacity in infants and insane persons; and if the Legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others,

it can scarcely be doubted that the act would transcend the due bounds of legislative power even if no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness, and those who should claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authorities negatived."

The bill under consideration clearly applies, and is intended to apply solely to those engaged in the sale of merchandise and has no application to any other class of citizens. It would have no application even to one whose business was to buy, sell and exchange stocks of merchandise in bulk, because this would be a sale in the ordinary course of such person's business. It can apply only to those engaged in mercantile business,—merchants.

The merchant engaged in the regular mercantile trade, either at wholesale or at retail, if he is indebted, though perfectly solvent and entirely honest, if he meets with an opportunity to sell his stock of goods, before he can effect such sale and give to the purchaser a clear and perfect title to the property which is the subject of the sale, must comply with all the regulations of this bill, some of which are onerous and all but prohibitive, while those engaged in other lines of business, although they may be indebted, are bound by no such conditions. Their hands are free. They can dispose of their property without notice to any one and without requiring of the purchaser anything except the payment of the consideration agreed upon. The merchant who happens to be in debt, must, after finding a probable buyer, wait at least five days and give notice to his creditors. He must

require his purchaser to take an inventory of his entire stock, whether that is desirable or not; he must furnish such purchaser with a list of his creditors, their addresses and his indebtedness to each; his purchaser or himself must give notice to his creditors not only of the fact of the anticipated sale, but all its terms and conditions and such purchaser finds his contract of purchase invalid if the list of creditors be incomplete, however honest the mistake therein; while the trader, the mechanic, the farmer, the professional man, the banker or the baker, whether he be in debt or not, without consulting any one but the buyer, and the merchant who is not in debt, may sell at will.

By confining the prohibitory terms of the statute to merchants and exempting all other persons, natural and artificial, from their operation; by declaring void the agreements of the merchant and leaving the same kind of contracts valid as to others; by imposing conditions on one class of citizens in their right to dispose of their property, while there is a total immunity from such restrictions as to all other classes, an unreasonable, unwarranted and unconstitutional classification of citizens is made.

In the light of what has already been said it is apparent that the provisions of the bill are obnoxious to those provisions of the State Constitution and of the Constitution of the United States which are designed to insure to the citizen the right to life, liberty, property, and equality before the law and with which the theory of our government presumes all men to be endowed by nature.

Article 5 of the Amendments to the Federal Constitution provides, among other things, that no citizen shall be deprived of life, liberty or property without due process of law.

Article 14 provides, among other things:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws."

Section 21 of Article 1 of the State Constitution provides that no man's property shall be taken by law without just compensation.

Section 23 provides that the General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens.

These constitutional provisions are the supreme law of the State upon this subject. To that law all must yield obedience,—the executive, the legislative, and the judicial departments of the government, as well as every citizen from the highest to the lowest. In them liberty dwells and freedom has her habitation. They represent the essence of free government as established by our fathers and given to us in trust for our children. They constitute the law of the land, aye of the Indiana land, and as such they are sacred. Under their mandate no person can be deprived of life, liberty or property without due process of law. Under them every person is entitled to the equal protection of the law. Under them every one may acquire property, possess and protect it, as well as defend his life and liberty. Under them all these rights are the guaranteed, inherent and inalienable heritage of every citizen. And under them an enactment which deprives the citizen of his property or of any of the essential attributes of its ownership, or of any part of his personal liberty, is just as much inhibited as one which would deprive him of life.

Equality before the law is the cornerstone of the whole national fabric, and these provisions of the Constitution of Indiana are, as we have seen, but the reiteration of the provisions of the National Constitution. They require that all citizens in like conditions and circumstances shall stand upon equality of right and privilege under the law.

One of the inherent rights of the citizen intended to be protected by these provisions of the Constitution of the State and nation from encroachment by legislative enactment, as has been already suggested, is that of the acquisition, free use and enjoyment and the disposition of property. That this is true has been affirmed by our own Supreme Court on all occasions where the question has in any wise been presented.

Quoting from Judge Cooley, our Supreme Court has said in the case of Dixon v. Poe, 159 Ind. 497:

"To forbid an individual or a class the right to the acquisition or enjoyment of property in such manner as is permitted to the community at large, would be to deprive them of liberty in particulars of primary importance to their pursuit of happiness."

One of the chief and most valuable attributes of the ownership of property, is the right to dispose of it, and to take from the citizen this right, or so to trammel and hamper it as to impair substantially its use, is to take from the citizen his property as much as if it took from him the thing itself.

It has been well said:

"To take from property its chief element of value, and to deny to the citizen the right to use and transfer it in any proper and legitimate manner, is as much depriving him of his property as if the property itself were taken."

Third National Bank v. Devine Grocery Co., 97 Tenn. 611, (37 S. W. 390).

The effect of the measure under consideration is to restrict and burden the merchant's property in such a manner as to prevent its free transfer and a realization of its full value. It takes away one of the chief elements of its value, to-wit: the right to use and legitimately dispose of it.

Speaking upon this question the Supreme Court of Utah, in the case already referred to herein, used this language:

"Property has some essential attributes without which we could not conceive it to be property. Among these are use, the enjoyment, susceptibility of purchase, sale, and of contracts in relation thereto. The taking away of one of the essential attributes may violate the constitutional guarantee that no person shall be deprived of his property without due process of law as clearly as in the case of physical taking without due process of law. An enactment, therefore, like the one in controversy, which deprives an owner of his liberty to sell his property, or contract in relation thereto, in the same manner as others engaged in the same business might lawfully do, invades his rights guaranteed by the Constitution and cannot be upheld; and to prevent the free exchange, sale or disposition of property according to the immemorial usages of trade is to deprive it of one of its main attributes."

Our own Supreme Court has so clearly stated the law as applied to this class of legislation as to leave no room for doubt as to what the law is upon the subject in the State of Indiana.

In the case of Dixon v. Poe, supra, from which I have already quoted, the court holds an act void as obnoxious to the above provisions of the Constitution of the United States and of this State because the act imposed conditions upon a merchant in the redemption of his checks that were not imposed upon citizens engaged in other callings. And in the case of McKinster v. Sager, decided by our Supreme Court on the 29th day of December,

1904, and reported in Vol. 72, page 51, of the N. E. Reporter, where a statute enacted upon the same subject and very similar in terms, was under consideration, the court held that the law was unconstitutional because of the unreasonable classification therein as to the remedy afforded the creditors of the debtor. The argument of the court and the reasons upon which the case was decided apply with equal force to the bill now under consideration. It is there said, quoting from an opinion in the 20 Mich. 452:

"But the discrimination by the State between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandizing or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in State government. When the door is once opened to it there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety, but no farther. Every honest employment is honorable. It is beneficial to the public. It deserves encouragement. The more successful we can make it, the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another, or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all and to give all the benefit of equal laws."

These expressions of our own court of last resort leave it clear to my mind what would be the fate of this measure were it to receive executive sanction.

I am not unmindful of the fact that in the State of Massachusetts a measure somewhat similar in terms to the one under consideration has received the doubting approval of the Supreme Court of that State, nor that a similar measure has been upheld in the State of Washington and in the State of Tennessee. The Tennessee statute was upheld by a divided opinion of the Supreme

Court of that State. An able dissenting opinion was delivered by one of the members of the court, in which the line of argument pursued was precisely the same as that followed by our own Supreme Court. If the fate of this measure depended upon the Tennessee decision alone, I would feel myself irresistibly impelled to follow the reasoning of the dissenting opinion.

The same question that is presented here was presented to the Supreme Court of the State of Ohio, also to the Supreme Court of the State of Utah. In each case a very able and exhaustive opinion was delivered, by Shauck, judge, speaking for the Supreme Court of the State of Ohio, and by Bartch, judge, speaking for the Supreme Court of the State of Utah, in which these laws were held unconstitutional. In the Ohio case it is said:

"Applying the familiar and unquestioned rule that the validity of an act is to be determined by its operations, and not by its title or declared purpose, this act, under the guise of preventing fraud in such sales, prohibits them altogether, and thus places upon the enjoyment of property an important restriction which no public interest requires, and which the Constitution, therefore, forbids. One who challenges the soundness of this conclusion should be prepared to maintain the validity of an act expressly forbidding sales of stocks of merchandise in bulk. By the act the Legislature has attempted to discriminate unwarrantably among creditors and debtors. * * * *.

"Although the act applies to all the creditors of the seller, it applies to those only who are creditors of the owner of a stock of merchandise, and thus an unreasonable burden is imposed upon a limited class of debtors for the supposed benefit of a limited class who are their creditors."

In the Utah case it is said:

"While it is within the province of the Legislature to prevent fraudulent sales as a protection to creditors, still, when it attempts to do this,—to remove one evil,—it must not so restrict individ-

ual rights and disturb industrial pursuits and usages as to cause a score of wrongs.

"We are of the opinion that the enactment in controversy abridges some of the inalienable rights of persons guaranteed by the Constitution; that it is not a proper exercise of the police power of the State; that it deprives property of one of its chief attributes, and some persons the liberty to dispose of property as others may; * * * *; that it deprives the person to whom it applies of a right of property without due process of law; and that, therefore, it is null and void."

As we have seen, the views of the several courts as expressed in these cases are so clearly sustained by the general principles of law, and are so much in harmony with the decisions of our own Supreme Court, as to convince me that whatever the law may be held to be in the States of Massachusetts, Washington or Tennessee, that in the State of Indiana laws of this character cannot be upheld.

Because the bill arbitrarily despoils the citizen of his property without due process of law; discriminates between merchants and other classes of citizens in their right and power to dispose of their property; discriminates between solvent merchants who are indebted and merchants who are free from debt, in their right and power to dispose of property; and gives to citizens, other than merchants, privileges and immunities that are not enjoyed by merchants who stand upon the same footing as such other citizens, I am compelled to withhold from it executive approval.

If a measure were passed applying only to insolvent persons selling stocks of merchandise in bulk, I believe it would be a valid exercise of legislative power, and I would give it my approval.

Draining of Fresh Water Lakes.

March 4, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 149 without my approval.

The bill seeks to preserve the fresh water lakes of the State of Indiana at their established level and protect them from being injuriously affected or destroyed by the lowering of the water level thereof.

In the main the bill has my approval. It has some provisions, however, which are so clearly within the inhibitions of the Constitution as to render it invalid.

Certain provisions of the bill contemplate that drains may hereafter be established within forty rods of fresh water lakes, in accordance with the present drainage laws.

Section 6 provides that the State Board of Health, if it determines that the water level in a lake has fallen below the high water mark as established by the act, and has consequently affected the public health, may enter an order requiring the drains within forty rods of the lake affected to be filled, and file a copy of this order with the clerk of the court in the county where such lake is situate, whereupon notice shall be given to the parties interested, by publication, and any person interested or aggrieved by the action of said board in ordering the filling up of such portion of said ditch as lies more than forty rods and less than eighty rods from the meander or marginal line of said lake, may appeal to the circuit court of said county, and that thereupon a hearing shall be had before such court upon the single issue as to whether the level of water in such lake is

not threatened or impaired by the escape of waters into such ditch. The ditch ordered filled may have been constructed under the public drainage laws and the cost of its construction met by assessments upon property benefited thereby and may have resulted in the reclamation of lands above the point in said ditch ordered to be filled.

In every such case the filling of such ditch would destroy an improvement in which each of said land owners would have a vested right,—a property interest. It might also destroy valuable lands reclaimed by such improvement and cause them to become waste or overflowed. This would result in the destruction of property rights that are clearly within the constitutional inhibition found in Section 21 of the bill of rights which provides that no man's property shall be taken by law without just compensation.

There is no provision in the act for the assessment of any compensation or damages on account of the destruction and the taking of the property. In effect this section of the measure under consideration takes the property of the citizen without any provision whereby his damages and injuries may be assessed. It is so clearly invalid as to require neither argument nor citation of authority beyond the Constitution itself.

I am informed that the subject of the protection of the fresh water lakes of the State is fully covered by the provisions of the general drainage act which has been pending in the General Assembly and which I understand is passed and is now being enrolled for transmission to the executive. If so, no substantial injury will follow the failure of the present measure to become a law.

Imprisonment for Debt.

March 2, 1905.

Mr. Speaker and Gentlemen of the House of Representatives:

I return herewith House Bill No. 306 without my approval. The act creates and defines the crime of child desertion and provides punishment therefor. I am in full sympathy with the principal object of the bill, and regret that I am not able to give it my approval in its present form.

The title of the bill is, I think, clearly insufficient. It reads as follows: "An act concerning child desertion." It is impossible to tell from this title that the bill is penal in character, that it defines a crime, or provides punishment for the commission of the act inhibited.

The bill provides:

"That the father, or, when charged by law for the maintenance thereof, the mother, of a legitimate child or an illegitimate child or children under sixteen years of age living in this State, who being able, either by reason of having means or by reason of having capacity to earn wages by personal services or labor, to provide such a child or children with proper and necessary home, care, food and clothing, shall neglect or refuse so to do, * * * * shall be deemed guilty of child desertion."

It also provides that any such father or mother, their "said child or children being legally an inmate or inmates of a county or other children's home, who shall neglect or refuse to pay the trustees of such children's home the reasonable cost of keeping such child or children in said home, shall be deemed guilty of child desertion and on conviction shall be imprisoned in a State prison not less than one year nor more than three years."

The last clause just quoted in effect provides for

imprisonment for debt. It creates a civil liability,—an obligation upon the part of such father or mother to pay money,—and provides imprisonment for failure to meet such obligation.

Section 22 of the Bill of Rights provides:

"There shall be no imprisonment for debt, except in case of fraud."

The clause under consideration is therefore invalid. So, also, is Section 3, the same being based upon the offense created in the clause just considered.

There ought to be a statute defining child desertion, making the same a crime, and providing for the punishment of persons found guilty of such offense. That portion of the first section of the act, which provides that failure on the part of the parent who is able, either by reason of having means or by reason of having capacity to earn wages by personal services or labor, to provide for the necessary and proper home, care, food and clothing of his child, and makes the neglect or refusal of such parent so to do an offense punishable by imprisonment, is, I have no doubt, a valid exercise of legislative authority, and I would be glad to give approval to such a measure.

I therefore suggest that the bill be re-written, that the clause and the section thereof within the constitutional inhibition, be eliminated therefrom, that the title thereto be re-written and made sufficient, and that such bill be then re-introduced and passed.

Relating to Pleading and Practice.

February 28, 1905.

Mr. President and Gentlemen of the Senate:

I return herewith Senate Bill No. 38 without my approval.

The bill provides for certain changes and innovations in matters of pleading and practice in civil, probate, special statutory and criminal proceedings, and purports to "provide for the removal of technical defects and for the decision of causes upon the substantial issues between the parties," but its effect, if it became a law, would be to increase appeals and multiply reversals rather than to minimize them.

I agree with the friends of the measure that pleading and practice is too technical in the courts of Indiana, and that there are too many reversals of causes upon grounds other than the merits of such causes. The sole object of judicial machinery should be to secure exact justice between men. In so far as existing judicial machinery falls short of that purpose, it is defective and ought to be amended.

The frequent reversal of causes for slight errors in the admission of testimony or trifling slips made by the trial judge in the progress of the trial, impairs the confidence of the public in the certainty of justice, and is to be greatly regretted. There are some provisions in the bill under consideration that, if enacted, would tend to minimize such errors. These appeal to me, and I would give my approval to them if I could. But there are provisions in the bill which I am confident would multiply such errors, and which preclude me from assenting to its passage.

Sections 1 to 5, inclusive, require that all demurrers,

motions to quash, or motions of any kind, addressed to any pleading, containing two or more paragraphs or counts, or to two or more subjects or questions; and that two or more joint objections to any motion or proceeding, or to two or more items of evidence, shall be held to be separate and several, and shall be sufficient to challenge, separately and severally, the sufficiency of each paragraph or count of any such pleading, or of each of such subjects or questions, or the correctness of the ruling of the court upon each of such items of evidence or upon such motions.

Said sections also provide that any exception taken to any ruling of the court shall be held to be separate and several objections to each question ruled upon, though it be a joint exception in fact.

They further provide that exceptions taken to the giving, refusing or modifying instructions, though such exceptions be general in character, shall be held to be separate and several, and that general assignments of error in motions for a new trial shall be held to be separate and several.

They also further provide that any demurrer, motion, objection, exception or assignment of error, in which two or more parties shall join, shall be held to be separate and several.

In short, it applies to the whole procedure of issue and trial, the vice embodied in the general demurrer for want of facts now allowed by the law.

I know of no one rule of practice which makes it possible to plant so many errors in causes pending in the *nisi prius* courts of the State as does the right of general demurrer.

Lawyers find what they conceive to be a fatal defect in a pleading filed by opposing counsel. They file thereto a general demurrer for want of sufficient facts. Argu-

ment is made upon the demurrer, but the real defect is adroitly and purposely concealed and not presented to the court, lest the court discover and permit amendment and thereby the removal of a chance to implant error in the record of a cause of doubtful merit. Not being presented, the court overlooks it, and overrules the demurrer. Counsel promptly except to the ruling. The trial proceeds. The cause is lost on its merits. Then the knowledge of the existence of a fatal error in the record impels both counsel and client to take an appeal. The appeal is taken. Once in the Supreme Court, the battery so carefully masked in the trial court is revealed, the error pointed out, and the cause reversed.

The provisions contained in the first five sections of the bill will make possible a like practice in all the proceedings of causes in the trial court, involving the issues, the trial and the motion for a new trial. If enacted, they will inevitably increase appeals and multiply reversals, and prove a grievous disappointment to those who enacted them with the belief that they would minimize appeals and reversals.

If there is real desire to minimize appeals and reversals, an act precluding the reversal of a case on account of any ruling of the trial court on a demurrer for want of sufficient facts, except for such causes as are specified, and set out in such demurrer, ought to challenge the favorable consideration of the General Assembly, and, if enacted, it would do much toward accomplishing the object desired.

Section 10 of the bill is also objectionable. It provides that any rule made by any court shall not be binding upon the court when its enforcement will work a hardship or injustice.

Rules of court, when adopted and declared, now have the force and effect of statutes, and are binding upon

the court that makes them, upon all counsel and upon all litigants who come before such court. They rest upon and bind all alike, and so they ought to do.

If a cause has progressed until a rule of court attaches thereto, the court ought not to have the power to waive the rule and take such cause out of the operation of such rule upon discretion.

Section 11 provides that where one division of the Appellate Court has rendered a decision, one or more judges of the other division of such court may at any time, before the opinion has been certified to the trial court, bring such cause before the full court for further examination, opinion or decision.

The effect of this provision would be to cause counsel who lose a case in one division of the Appellate Court to importune members of the other division of such court until some one of such members exercises the power vested in him by the statute and brings the case before the whole court. In this way the business of the court would be disarranged and obstructed and the court compelled to sit *en banc* upon every case.

I am fully convinced that there ought not to be two divisions of the Appellate Court, and that the court should be required in every case to sit as a single body, but the statute ought to make direct provision for such change and not seek to do it by the indirect provisions found in said section.

I am conscious that lawyers differ greatly upon questions of practice and judicial procedure, and that what may be accepted by one as the consummate flower of human wisdom may appear to another as dangerous or as little better than a useless and ineffective provision. For this reason I would hesitate to withhold my approval from the present measure were it not for the presence

in the bill of a section that is clearly within the inhibition of the Constitution.

Section 12 of the measure provides that when a petition for a rehearing is filed in either the Appellate or the Supreme Court, the chief justice or presiding judge shall distribute the case to some judge other than the writer of the original opinion, who shall re-examine such record, and report thereon. This section presents a graver question than any heretofore mentioned. It is a direct invasion by the Legislature of the rights and powers of another independent and coordinate department of the State government. By express constitutional provision the government of this State is divided into three separate departments, independent and coordinate,—legislative, executive and judicial. The judiciary constitutes an independent department of government,—possessing not only equal powers, but exclusive powers with respect to the duties assigned to it. The Supreme Court is a constitutional tribunal. Its power to prescribe rules regulating the conduct of its business exists, not by virtue of legislation, but by virtue of the inherent right of that tribunal to maintain its dignity and independence and to decide for itself the manner and mode in which it shall discharge its official duties. Into that domain the Legislature has no right to go.

In the case of Smythe v. Boswell, 117 Ind. 366, this language is used in the discussion of the question now under consideration:

> " * * * * the judiciary is an independent department of government, exclusively invested by the Constitution with one element of sovereignty, and this court receives its essential and inherent powers, rights and jurisdiction from the Constitution and not from the Legislature."

An act of the General Assembly of 1889 provided that

"It shall be the duty of the Supreme Court to make a syllabus of each opinion recorded by said court * * * *."

This act was held unconstitutional on the ground that it sought to add duties to those devolved upon the judges of the Supreme Court by the Constitution. In passing upon the question the court said:

"We have no doubt that it is our right and our duty to give judgment upon the questions we have stated, because they directly concern the rights, powers and functions of the court, and no other tribunal can determine for us what our rights, duties and functions are under the Constitution."

Ex Parte Griffiths, 118 Ind. 86.

In a very early case in this State it was decided:

"The powers of the three departments are not merely equal,—they are exclusive, in respect to the duties assigned to each. They are absolutely independent of each other."

Wright v. Sefrees, 8 Ind. 298.

Speaking upon this question, Judge Elliott, in his "Appellate Procedure," aptly says:

"It is true, no doubt, that the Legislature may regulate the procedure, but it cannot in any manner destroy or impair the substantive power, for that is above legislative reach. The fundamental principle to which we have referred requires that it should be held that the conduct of business, the course of argument and the like, are matters for the determination of the courts and not for legislative decision. The Legislature may, of course, prescribe rules of pleading and practice and require the courts to conform to those rules, but it cannot so far control the conduct of business as to invade the domain of the judiciary. It is very questionable whether the Legislature can direct how briefs shall be prepared or arguments conducted, since the attempt to exercise such power would seem to be an unauthorized encroachment upon the province of the courts.

"It is an ancient principle that courts may prescribe rules for the conduct of business and this power is an inherent one, so

far, at least, as concerns the mode of conducting the affairs of the court * * * *. It is not, and cannot be, within the legislative power to so fetter or control the action of the courts in the conduct of business as to preclude the exercise of judicial discretion or judgment. * * * *. In so far as regards the personal conduct of judges of constitutional courts in the exercise of the duties of the judicial office it is the law that legislative power is ineffective to control them, for it is evident that without freedom of judicial action government must degenerate into a system of sovereign and supreme legislative power, and this cannot be allowed to take place under a republican form of government."

Elliott's Appellate Procedure, Sections 6 and 7.

In a very recent opinion of the Supreme Court, handed down as late as the first day of the present month, and not yet published, the court has spoken quite vigorously upon this question. The language hereinafter quoted is used in construing an act of the General Assembly, approved March 9, 1903, concerning civil procedure and requiring the Supreme Court to weigh the evidence and decide questions of fact in certain cases, and is as follows:

"The court's power to prescribe rules regulating the conduct of its business is inherent in the tribunal. It does not depend on any authority granted by the Legislature. While the latter may prescribe rules of procedure and pleading by which both courts and the parties in the case are bound, nevertheless, it cannot, under the Constitution, encroach on judicial domain by prescribing the manner and mode in which the courts shall discharge their official duties. The Legislature has no more right to break down the rules prescribed by this court for conducting its official business, than the court has to prescribe the mode and manner in which the Legislature shall perform its legislative duties."

Parkinson v. Thompson, No. 20,401.

A California statute provided:

"All decisions given upon an appeal to any Appellate Court

of this State, shall be given in writing, with the reason thereof, and filed with the clerk of the court."

Acting under this statute the Supreme Court of that State decided a case without giving an opinion in writing setting forth its reason for the decision. A motion was made to require the court to file an opinion giving its reason. In passing upon the motion the court said:

"The provisions of the statute had not been overlooked when the decision was rendered. It is but one of many provisions embodied in different statutes by which control over the Judiciary Department of the Government has been attempted by legislation. To accede to it any obligatory force, would be to sanction a most palpable encroachment upon the independence of this department. If the power of the Legislature to prescribe the mode and manner in which the judiciary shall discharge their official duties be once recognized, there will be no limit to the dependence of the latter. If the Legislature can require the reasons of our decisions to be stated in writing, it can forbid their statement in writing, and enforce their oral announcement, or prescribe the paper upon which they shall be written, and the ink which shall be used. And yet no sane man will justify any such absurd pretension, but where is the limit to this power if its exercise in an particular be admitted?

The truth is, no such power can exist in the legislative department, or be sanctioned by any court which has the least respect for its own dignity and independence. In its own sphere of duties, this court cannot be trammeled by any legislative restrictions. Its constitutional duty is discharged by the rendition of decisions. The Legislature can no more require this court to state the reasons for its decisions, than this court can require, for the validity of the statutes, that the Legislature shall accompany them with the reasons for their enactment."

Houston v. Williams, 13 Cal. 25.

The Legislature of this State has no power to require a re-examination or a re-hearing of a case already considered and adjudicated by the Supreme Court.

Address of Mr. Justice Brown on Judicial Independence, Second Volume, American Bar Association, 1889.

Nor has the Legislature power to require the Supreme Court of this State to give an opinion in writing. The fact that an opinion in writing is prepared and handed down in every case decided by the Supreme Court, is due not to legislative enactment, but to a constitutional provision.

Section 7, Article 5, State Constitution.

It has been urged by the friends of this measure that the Supreme Court can take care of itself and needs no assistance from me. I think the statement is quite true. But the Supreme Court, nor any other tribunal or department of government, can perform for me the constitutional functions devolved upon me. These I myself must assume. One of the duties devolved upon this office is that whoever occupies it shall participate in legislation to the extent of approving or disapproving all measures passed by the General Assembly. This duty, considered in the light of his official oath, requires whoever is Governor to decide for himself the constitutionality of every legislative measure coming before him. If, upon consideration, the unconstitutionality of a measure is clear to him, it is his duty to interpose objection to its passage and to give the reasons of his objection.

Proceedings in Civil Cases.

March 8, 1905.

Mr. President and Gentlemen of the Senate of the Sixty-fifth General Assembly of the State of Indiana:

I deposit herewith Senate Bill No. 310 with the Secretary of State without my approval, pursuant to

the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill seeks to amend Section 256 of "An act concerning proceedings in civil cases," approved April 7, 1881, in force September 19, 1881, and being Section 413 of the Revised Statutes of 1881 and Section 417 of Burns' Revised Statutes of 1901.

The title of the act sought to be amended is improperly set out in the title of the bill. The bill reads, "An act to amend Section 256 of an act entitled an '*act concerning civil procedure*' ."

As above suggested, the title of the act sought to be amended is an "*Act concerning proceedings in civil cases.*"

The error in the title renders the bill invalid.

Section 21, Article 4, of the Constitution provides:

"No act shall ever be revised or amended by mere reference to its title; but the act revised or section amended shall be set forth and published at full length."

R. S. 1901, Section 117.

It has been decided that where the title to an amendatory statute refers to but does not recite the title of the act sought to be amended, the designation in such title is insufficient, although the section attempted to be amended is referred to as being a designated section of the Revised Statutes of 1881.

Boering v. State, 141 Ind. 640;
Feibleman v. State, 98 Ind. 516;
Linquest v. State, 153 Ind. 543.

In the last cited case the court announces the rule as follows:

"It is settled by the decisions of this court that, in the revision of an act or the amendment of a section, two things are required: (1) The title of the act to be amended must be referred to by

setting it out; (2) The act as revised, or section as amended, must be set forth, and published at full length * * * * .

"When the act is identified in the manner required by the Constitution, and it is not certain what act was intended to be amended, the court will resort to means other than the title to determine what act was intended. But if the act is not identified in the manner required by the Constitution, the court cannot resort to other means of identification, although a resort to such other means would point out the act intended beyond any question."

The exact question presented by the defect in the title to the bill filed herewith was presented to the Supreme Court in the case of Mankin v. Pennsylvania Company, 160 Ind. 453. In this case the court was asked to construe an act of the General Assembly of 1891, which purported to amend Section 350 of the act of 1881 concerning struck juries. The amendatory act submitted to the court for construction referred to the title of the act to be amended as "*An act concerning trial by jury*," giving the number of the section of the act sought to be amended, and the section number thereof in the Revised Statutes of 1881. The act sought to be amended was the same act sought to be amended by the bill filed herewith. As we have seen, the title to said act of 1881 is "*An act concerning proceedings in civil cases.*"

The court held the act of 1891 to be unconstitutional and void, under the provision of the constitution hereinbefore cited. I quote from the opinion:

"It has been uniformly held by this court that two things were required by said section of the Constitution in the amendment of a section of an act: (1) The title of the act amended should be referred to by setting the same out in the title to the amendatory act; and (2) the section as amended should be set forth and published at full length. * * * *. The title to the act of 1891, in controversy, reads as follows: 'An act to amend Section 359 of an act concerning trial by jury, in force since September 19, 1881, the same being Section 525 of the

Revised Statutes of 1881.' The reference in the title to Section 359, under the cases cited above, is not sufficient. Said section may be found in an act entitled, 'An act concerning proceedings in civil cases,' * * * *. It will be observed that the amendatory act of 1891 does not refer to the title of the act to be amended by setting it out, as required by said Section 21 of Article 4 of the Constitution, but refers to the act to be amended as 'An act concerning trial by jury,' which is not the title of the act in which said Section 359, supra, may be found. When the act or section to be amended is identified in the manner required by the Constitution, and it is not certain what act or section was amended, the court will resort to means other than the title to determine what act or section was amended. But if the act or section is not identified in the manner required by the Constitution, the court will not resort to such other means of identification, although the act intended would thereby be ascertained beyond question. * * * *. It follows that as the title of said act of 1891, supra, fails to identify the section to be amended by setting the same out in the title thereof, as required by Section 21 of Article 4 of the Constitution, the same is unconstitutional and void, * * * *.''

From the above authorities it becomes clear that the title to the bill filed herewith is insufficient, and that the act would be invalid if the bill were signed. I therefore refuse to approve the same.

Publication of Allowances by City Councils and School Boards.

March 10, 1905.

Mr. President and Gentlemen of the Senate of the Sixty-fifth General Assembly of the State of Indiana:

I deposit herewith Senate Bill No. 265 with the Secretary of State without my approval, pursuant to the provisions of the Constitution of the State, and submit herewith my reasons for so doing.

The bill provides for the publication of notice in two

newspapers of general circulation, of different politics, of each item of any and all allowances made by the board of trustees of any town or by the common council of any city having a population of less than twenty-five thousand, within ten days after the making of such allowances.

Section 2 provides a penalty of from ten to twenty-five dollars for any violation of the provisions of such bill.

There is no public demand or necessity for this measure. If enacted, it would conserve no public purpose. It would benefit no one in any community except the publishers of local newspapers in the several towns and cities to which its provisions would apply. I concede the value of local newspapers to such communities. They are worthy of consideration and encouragement. They are not, however, entitled to consideration and encouragement at the expense of the several municipal treasuries of the State. Public funds raised by taxation ought not to go for any purpose other than a public one.

It is urged that publicity will prevent extravagant and fraudulent allowances, and the law requiring township trustees to publish annually a statement of public expenditures is referred to as a justification for the measure under consideration.

It is true that, under existing law, township trustees are required to publish an account of their expenditures. But this is required only once a year. The position of township trustee differs materially from that of town boards and city councils. The township trustee generally lives in a rural district. He is more or less isolated. The people are separated from him by distances of greater or less length. Many of his official acts are done in private. There is little opportunity for the taxpayers of the township to know what expenditures he

is making. For these reasons there is some justification for the existing law requiring him to make publication once a year of such expenditures. It is doubtless true, also, that the fact that he is required to make publication of such expenditures has a restraining influence upon him, and that the law has done something to prevent extravagant expenditure of township money. But the law has been the subject of no inconsiderable abuse through the separation of items, resulting in an increased number of items for publication, to the profit of the local newspapers and the detriment of the township.

Trustees of towns and common councils of cities are not so situated. They meet at fixed and stated intervals. They have a designated place of meeting. The public is advised of the time and place of such meetings. No expenditure of public money can be made or authorized except in open sessions of such boards duly convened. The places of meeting for such bodies are convenient of access. The population of towns and cities is centralized, and every opportunity is given the citizens of such municipalities to know exactly what expenditures are being made. Every allowance made is practically made in the presence of the people whose money supplies the fund from which payment is made. Opportunity for debate and discussion is always present. A record is required to be made of every allowance. This record is open to the inspection of any taxpayer.

Under the provisions of the bill filed herewith, every item allowed by any such board is required to be published in two newspapers, if there be such newspapers in such city or town, at an expense of five cents per item for each paper, within ten days after such allowance is made. This would necessitate repeated notice of partial payments and would multiply the expense many times beyond what it would be if notice of such allow-

ances was required to be made at the close of the year. For example: If John Smith is employed by the town or city as a laborer upon its streets and an allowance is made to him therefor, it must be immediately published. In most towns and cities of the State, the boards of trustees and the city councils meet at least once each month, and in many of them twice each month. Every allowance made to John Smith for labor upon the streets of any such town or city must be published as a separate item within ten days after it is made. If he is employed a single day each week during the year, twenty-five different publications will be required, at a cost of $2.50. The same is true of every other laborer upon the streets of any such town or city. The only purpose of this expenditure is to inform the taxpayers that Smith has been paid,—a fact of which every taxpayer has had ample opportunity to know without publication.

In my judgment the benefit to the public is not worth the cost. And this is especially true in view of the fact that every such allowance must be, and in fact is, made openly, on motion, by a public body in a public meeting of which general knowledge exists, and to which every taxpayer may go, and to which many do actually go. Here is another example: A city employs 120 school teachers. Their salaries are paid monthly. Each such payment is made up of 120 items. Such publication, therefore, will be required once a month for as many months as constitute the school year in such city, which is usually from eight to nine months. If such school year is nine months in length, the items of salary allowance to teachers alone, if made monthly, will aggregate 1,080. At 10 cents per item for each publication the total cost of such publications in such city is $108.00. What value has the public received for this expenditure?

Absolutely nothing beyond the information that the school board has paid the several teachers of the city the salaries which were fixed by written contracts, of which contracts public record was made before the term of service of any of such teachers begun. This is but one instance. I repeat the information is not worth the cost.

This measure, if it became a law, would involve the expenditure by the various towns and cities to which it would apply of from $100.00 to $1,000.00 per annum, for which the taxpayers would receive substantially no return. When we consider the number of towns and cities in the State that would be subject to the provisions of the bill, we can at least roughly estimate the cost. The aggregate of such expenditures would, in the course of a year, reach a startling sum. I know of no way in which I can better serve the citizens of such municipalities than by withholding executive approval from such a measure. I do not undervalue the newspapers of these several communities. I know they would profit by the measure if it were the law. But I am a public servant of the public's interests and not a private servant of private interests. I therefore decline to sign the bill.

PROCLAMATIONS

ARBOR DAY.

The planting of trees is a public benefaction. Whosoever plants one makes the earth more habitable and a happier place in which to dwell, and thereby earns the grateful praise of coming generations.

Believing that systematic and persistent effort will restore in some measure the all but inexhaustible and limitless forest which once covered the larger portion of the area of this Commonwealth, but which is now gone; and in conformity to a law solemnly enacted and approved, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and proclaim Friday, April 21, and Friday, October 20, 1905, as Arbor Days, to be observed throughout the State by the planting of trees and shrubs upon the grounds about all public buildings and public institutions and upon the public highways, as well as upon grounds about private homes, for their adornment and beautification.

Each of said days is hereby designated and set apart as a day of rest and celebration by all the people.

Those in charge of the schools of the State, whether public or private, are hereby recommended and urged to observe each of said days, in so far as the same may be practicable, by public exercises of a character calculated to teach their respective pupils the wisdom and necessity of the planting, the culture and the care of trees.

By so doing we will add to the beauty, the wealth and

the resources of the State and to our own culture and happiness.

Done at the Capitol of Indiana, in the City of Indianapolis, this first day of April, in the year of our Lord, nineteen hundred and five, in the year of the independence of the United States the one hundred and twenty-ninth and of the State of Indiana the eighty-ninth.

MEMORIAL DAY.

In pursuance of established custom, in obedience to formal legislative enactment, in memory of past sacrifices and in acknowledgment of exalted services unselfishly rendered, I, J. Frank Hanly, Governor of the State of Indiana, do hereby appoint, set apart and proclaim Tuesday, the thirtieth day of May, 1905, as Memorial Day.

And I also do hereby sincerely recommend that the day be devoutly observed throughout the State by all the people in commemoration of the devotion, the valor and achievements of our soldier dead, wheresoever and in whatsoever war they fell and wheresoever they may rest.

They are dead. The inanimate soil of a continent, the multiplying sands of the islands of the seas, and the solemn waters of the great deep cover their silent forms, but their memories still live and are ever present in the thought and hearts of a virile and a mighty people, and their souls still go marching on, inspiring and impelling us, their countrymen, to acts of patriotism, to love of country and to obedience to its laws.

They are dead. They died for the rights of man. They died for free institutions. They died to preserve the solidarity of the nation. They died for liberty buttressed by law.

And now, lest we forget the things for which they died, let us every one desist from our several occupations on this day. Let business cease. Let public offices be closed. Let us devote the day to sacred memories and consecrate it to holy purposes. Let it be a day of tribute to the dead and a day of honor to the living. Let music and song, oratory and flowers, testify the sincerity of our gratitude and bespeak the constancy of our love. Let the flag, beneath whose folds they marched to death and glory, be seen at half mast on every public building and about the portals of every private home. Let the children participate in the public ceremonies of the day. Let them learn from what we say and do and from the sincerity of our devotion the value of free institutions and of the goodly land in which they live, and which is soon to be given into their keeping.

Let the thoughtless, the careless and the gay refrain from frivolous and noisy amusements and pastimes and give one day to the consideration of the verities of life and its obligations.

Let the unworthy and the dissolute remember the day and infract not the law.

Let us all, everywhere and everyone, come with clean hands and pure hearts, and in shoes of sandal wood make public acknowledgment of the debt of gratitude we owe them, and in the presence of one another let each renew his high resolve to preserve the inheritance they have left us.

Such an observance of the day as is herein recommended will do more than honor the dead—it will be helpful to the living, it will lift us to higher citizenship, and will go far toward vindicating the right of popular government to endure.

Done at the Capitol in Indianapolis, and given under my hand and the Great Seal of the State, this twelfth

day of May, in the year of our Lord, nineteen hundred and five, in the year of the Independence of the United States the one hundren and twenty-ninth, and in the year of the admission of the State of Indiana the eighty-ninth.

LABOR DAY.

By virtue of the authority vested in me by law, and in conformity with long established custom and formal legislative enactment, I, J. Frank Hanly, Governor of the State of Indiana, do hereby designate and set apart Monday, September fourth, one thousand nine hundred and five, as Labor Day, and I do hereby further proclaim the same as a special holiday and recommend that it be observed as such, not only by those who toil, but by men and women everywhere throughout the State, whatever their field of labor or their occupation.

This nation, with all it represents or is, is labor's contribution to the present sum of human peace and happiness. Within little more than a hundred years, with the aid of her twin servants, capital and science, she carved it out of the depths of primeval forests and the solitudes of pathless prairies; bridged its streams, revealed the hidden treasures of its fields and mines, builded its villages and towns, established its cities, reared within its borders homes innumerable, and bound them all into one with belts of steel and endless threads of wire. Through the divine ministry of toil the fullness of the land is ours. We live in favored times. The elements of the soil, of the air, and of the sky, and the seasons themselves have conspired with labor to make this a year of immeasurable plenty throughout the nation and especially within our own goodly Commonwealth.

It is therefore meet and proper that we set apart this day to celebrate labor's triumphs and to do honor to her children.

Therefore, let the flag—emblem of law and order, and of the equality of our citizenship—be publicly displayed. Let public and private business be suspended as far as may be consistent with necessity, and especially let those, so far as practicable, who labor with their hands be released from the performance of their daily tasks in order that they may have one day free from toil and care. Let the spirit of the occasion be such as becomes a glad and joyous celebration of the mighty force that has made us great both as a State and as a nation, and upon which depends the prosperity and happiness of our posterity.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the City of Indianapolis, this twenty-eighth day of August, in the year of our Lord one thousand nine hundred and five, of the Independence of the United States the one hundred and thirtieth, and of the admission of the State of Indiana the eighty-ninth.

THANKSGIVING DAY.

In accordance with the proclamation and recommendation of the President of the United States, duly made and published, appointing a day of national thanksgiving to be observed by the people of the nation; in conformity with sacred tradition and with hallowed, revered and long established custom; in continuance of a practice both beautiful and wise, and in acknowledgment of high and holy obligation to the Giver of all Good, I, J. Frank Hanly, Governor of the State of

Indiana, do hereby designate and set apart Thursday, the thirtieth day of this November, as Thanksgiving Day to be observed by the people of the State of Indiana.

From the day of its founding to the present hour, this nation has been led by the providences and the wisdom of Almighty God. For one hundred and thirty years it has been protected by His care and followed by His mercies. Periods of adversity have sometimes fallen upon us, but these have been shortened, their vicissitudes minimized and their rigors softened by His gracious favor and infinite tenderness. More largely than in any other land, our way has fallen "beside the still waters" and through "green pastures." We have sorrowed, and He has comforted us. We have sinned, and He has forgiven us. Our annals are replete with His goodness and His mercy.

The closing days of a most memorable year are quickly passing. A few weeks and they will have gone into history. It is therefore meet that we pause ere they are gone to consider the richness of the largess they have brought to us. Our harvests have been unusually abundant. Our granaries are full. The fruits of successful and peaceful toil are about us. Factory, shop, field and mine have contributed shares rich and full. Trade and commerce have registered increasing volume and augmented profit. Our material prosperity is without parallel. The social, intellectual and moral life of the nation has been strengthened and enriched. The public conscience has been stirred and quickened. Civic conditions have improved. Respect for the law has daily deepened in our thoughts and hearts. Citizenship has been exalted, and the land kept as our fathers left it—the habitation of liberty.

Believing that the spirit of thankfulness and of gratitude is already present in every heart and that it awaits

only an opportunity for expression, I recommend that all usual avocations be suspended on this day, that pause be made in all secular pursuits, that we assemble in our several places of worship and there make due and grateful acknowledgment of the beneficence of our Heavenly Father to us as a people, whether of State or of nation, and that with contrite hearts and penitential souls we seek forgiveness at His chancels for past faults and follies and make humble and sincere supplication for future guidance and deliverance.

Let the arrogance of prosperity give place to the humility of dependence, and the meanness of self to the altruism of the gospel of the Christ. Let this be a day of prayer, of praise and of thanksgiving. Let it be characterized by a revival of love of country and of fraternal affection, by the reunion of families and of kindred, and by the renewal of confidence in one another. Let it be marked by ready benevolence to the homeless, by kindly and simple charity to the suffering and needy, and by christian ministry to the sorrowful. Let us especially remember with gracious tenderness the little ones whose lives are pinched by poverty by them unearned, and saddened by neglect by them unmerited, that they too may look up and be glad.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol in the City of Indianapolis, this fifteenth day of November, in the year of our Lord, nineteen hundred and five, in the year of the Independence of the United States the one hundred and thirtieth and in the year of the admission of the State of Indiana the eighty-ninth.

RIGHTS OF LABOR.

From a Labor Day Address Delivered at Fairmount, Indiana, September 5, 1904.

I am in favor of labor unions, but labor unions must not construe liberty to mean license, for it means no such thing. Liberty involves the right of every man to live and work wherever he may choose. It involves the right to quit work, but not the right to prevent by violence, intimidation or riot, others from working. It includes the right to appeal to the sympathy and the common interests that any and all men who labor may have in the cause for which labor struggles, but it does not include the right to assault, the right to burn, the right to kill. There can be no such right as that. If such a right existed, liberty in its holiest sense could not exist. The two are incompatible, always and absolutely so. To burn is arson. To kill is murder. And arson or murder is as criminal and revolting when committed by a labor union man as it is when committed at the command of a corporation or by an individual in any other walk of life.

Labor cannot maintain its rights nor redress its grievances in that way. Such a course always weakens and never strengthens organized labor. It cannot win in any contest without the sympathy and approval of the great public. The public is composed, in the larger part, of that great body of men and women who, as consumers, stand between organized labor on the one side and organized capital on the other. In this country the will

of the public is sovereign. Alienation of the public's sympathy and the loss of the public's approval means the failure of any cause. Organized labor can have neither the public's sympathy nor the public's approval except as it steers its course within the letter of the law and keeps within the spirit of liberty as defined by the law.

PARTIES TO THE ISSUE.

From a Chautauqua Address delivered at Fountain Park Assembly, Remington, Indiana, August 16, 1905.

There are those who seek to make the question of obedience to the law a personal issue between themselves and the man who happens for the moment to be the Chief Executive of the State. In this they are in error. There is, there can be, no personal issue between us. The issue exists, that I admit; but it is not between them and me. It is between them and a far greater and a more enduring power than I. It is between them and the law itself. The challenge to them to surrender, or the command to obey the law does not come from me, but from the law; and they will continue to come with increasing frequency and growing insistence years after I have gone. I will soon cease to have to do with public affairs. I will soon pass entirely from the stage of action and thus be forever eliminated from the problem, but the law will survive, and the issue will remain. It will continue to abide and to endure until the great public, stirred by the prickings of an awakened conscience, shall rally to the law's support and give it victory. The result of the battle lies not with one man, nor with one administration, but in the decision to be formed in the hearts and consciences of a people, who, for more than a century, have found the law a safe and an abiding house of refuge, and who believe in its sovereignty, in its sanctity and

in its majesty. Aye! more than this. The issue is wrapped in the evolution of the race itself, and it will continue to unfold, for it is a part of the unerring, changeless purpose of the Infinite, until the process of the suns shall have ceased and time shall be no more.

FAREWELL MESSAGE

Sixty-fourth General Assembly, March 6, 1905.

To the President of the Senate, the Speaker of the House of Representatives and the members and Officers of the Sixty-fourth General Assembly.

Gentlemen: The Sixty-fourth General Assembly of the State of Indiana is about to end by constitutional limitation. In a few hours it will have gone into history, there to be judged for its deeds whether of omission or commission.

There is in the record it has made so much of the good and so little of the bad, that I cannot forbear a word of commendation before you depart to take up again the duties of private citizenship.

Incessant labor, high ability and lofty purpose have characterized your services to the State throughout the session. You have earned the gratitude of the people whose servants you have indeed been. The volume and the character of the legislation you have enacted, bespeaks for you the continued confidence of your fellow-citizens, without regard to their party affiliations.

The measures you have passed, are in the interest of the peace and the repose of society and of its improvement and elevation, as well as for the material interests of the commonwealth. Your work may contain imperfections,—it doubtless does,—the work of no man or set of men can be expected to be perfect. Some of these imperfections may not yet be apparent and may not

become so until tried in the crucible of actual experience. In the main, however, your work is such as to justify the partiality of the people whose commissions you have borne.

All has not been obtained that I desired, but it has been more nearly obtained than is usual in public affairs. We have sometimes differed, but our differences have been at all times the fearless differences of courageous, sincere and honest men, who were moved by a common impulse,—a desire for the welfare of the State and the happiness of its people.

Personally, I beg to thank you, one and all. You have been, without exception, considerate and tolerant. Of your kindness I am deeply sensible, and in these, the closing hours of what I believe will be looked upon as an historic session, I beg to make grateful and public acknowledgment thereof.

On the whole, you have builded better than I had hoped, and in fact better than any General Assembly convened in the State in many years has builded.

Commending you to the considerate judgment of an appreciative people, and wishing you safe return to your homes and families, I bid you good-bye with sincerest concern and desire for your future happiness and for the prosperity and advancement of the people of Indiana.

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